

REPUBLIC OF KENYA

High Court at Kakamega

Miscellaneous Civil Application 48 of 2011

**MIRRIAM AMAMBIA (*Suing for and on behalf of the Estate of
THE LATE LUKA AMAMBIA CHIBOLE*).....APPLICANT**

VERSUS

ENOCK ATSWENJE TITINA.....RESPONDENT

RULING

The application by way of Notice of Motion dated 20.9.2011 seeks orders for filing an appeal out of time.

The application is supported by the affidavit of the applicant, **MIRIAM AMAMBIA** sworn on 2.9.2011. The reason given for the failure to file the appeal within time is that the ruling sought to be appealed from was not ready for collection until 15.11.2011.

The application is opposed as per the replying affidavit sworn on 8.12.11 by the respondent, **ENOCK ATSWENJE TITIHA**.

According to the respondent, the intended appeal has no chances of success as the Kakamega CMCC No. 151 of 2011 which is the subject of the intended appeal was a replica of Kakamega CMCC No. 610/10 which was between the same parties.

The firm of K. N. Wesutsa advocates appeared for the applicant while the firm of Elungata & Co. advocates appeared for the respondent.

The counsel for the applicant filed written submissions while the counsel for the respondent did not offer any submissions.

I have considered the application, the reply to the same and the submissions made.

The orders striking out Kakamega CMCC No. 156 of 2011 were made on 5.8.11. The application herein was filed on 26.11.11. There was a delay of about 2 ½ months. The applicant has exhibited a letter filed in court on 11.8.11 which requested for certified copies of the proceedings and ruling delivered on 5.8.11.

The respondent has not commented in his replying affidavit regarding the issue of delay. This court accepts the explanation given for the delay. The delay is not inordinate.

Consequently, the application is allowed with costs to the respondent.

Delivered, dated and signed at Kakamega this 18th day of December, 2012

**B. THURANIRA JADEN
J U D G E**