



REPUBLIC OF KENYA

High Court at Nyeri

Miscellaneous Civil Application 1 of 2012

KIRU TEA FACTORY CO. LTD.....APPLICANT

Versus

JOSEPH GIOCHE KURIA.....RESPONDENT

RULING

The application is dated 9th January 2012 in which the applicant seeks the enlargement of time within which to file an appeal against the ruling and decree of the Chief Magistrate's court in civil Case No. 35 of 2011 Nyeri.

It is based upon the following grounds:

- 1. *Failure to lodge the appeal within time was caused by the need to first apply for leave to change the applicant's advocates.***
- 2. *The delay was not inordinate since the applicant's new advocate had to get instructions through a chain of command of the applicant's officers who do not stay in one place.***
- 3. *The respondent will not suffer prejudice as the decretal sum has already been paid to the same.***

The application is supported by the affidavit of John Kiama Mwega wherein the same has stated that ruling was delivered on 7th June 2011 striking the applicant's defence and entering judgment in favour of the respondent with cost. The applicant decided to use a new advocate having been dissatisfied with the said ruling and only managed to obtain leave on 15th December 2011.

That the first advocate had applied for certified copies of proceedings and the certificate of delay issued on 5th December 2011 and this present application filed on 11th January 2012 so the delay is not inordinate.

The application is opposed by the respondent who has filed a replying affidavit in which the same has stated that the applicant has not indicated when it made a decision to appeal against the ruling, reasons why no memorandum of appeal was not lodged as required on time and neither has the same explained the laches and inordinate delay.

I have looked at the affidavit both in support and in opposition of the application and the oral submission by the advocates herein.

Under order 50 rule 6 the powers of the court to enlarge time are wide and unfettered with the only issue being the justice of the case and that such enlargement may be ordered although the application for

the same is not made until after the expiration of the time appointed or allowed.

In the matter before me the applicant has explained the reason for the delay which was the need to have a new advocate on record and to obtain certified copies of proceedings and having paid the decretal sum to the respondent I see no prejudice to the same.

I am of the considered opinion that the justice of this case demands that I allow the extension of time to the applicant to file the appeal.

I therefore allow the applicant to file memorandum of appeal against the judgment and decree of the CMCC No. 35 of 2011 Nyeri within the next 7 days from the date herein with costs to the respondent.

Dated at Nyeri this 6th day of December 2012.

**J. WAKIAGA
JUDGE**

Mr. Gichuki for the applicant.

Mr. Nganga for Mr. Nderi for Respondent.

Ruling read in open court in the presence of the above named.

**J. WAKIAGA
JUDGE**