



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**MISC. CIVIL APPLICATION NO. 68 OF 2009**

**CHLORIDE EXIDE (K) LTD. .... APPLICANT**

**VERSUS**

**JOHN SARMWEI KIPROTICH ..... RESPONDENT**

**R U L I N G**

In the case of **Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi – Civil Application No.251 of 1997 at Nairobi**, the Court of Appeal set the guidelines for extension of time within which to file an appeal.

These are;-

- (a) **The period of delay,**
- (b) **The reasons for the delay,**
- (c) **Whether the appeal or intended appeal is arguable and is not frivolous,**
- (d) **Whether the respondent would be unduly prejudiced.**

Herein, the judgment sought to be appealed against was delivered on 28<sup>th</sup> October, 2008. This application was filed on 27<sup>th</sup> January 2009. This was a delay of about four months which was indeed inordinate. The reason or explanation for the delay is attributed to the court's delay in supplying certified copies of the proceedings despite a formal request by the applicant's previous advocate.

It is the applicant's contention that the appeal could not be prepared without certified copies of the proceedings. This is the main and only reason for the delay in having the appeal filed within the prescribed time.

In the case of **James Obando Vs. Isaiah Juma – Civil Appeal No. 222 of 2008 at Kisumu**, the Court of Appeal stated that copies of proceedings are not necessary for purposes of mounting a competent appeal. The reason for the delay is therefore unsatisfactory.

Besides, the applicant has not demonstrated that his appeal is arguable and that it is not frivolous. All in all, this application is devoid of merit. It must and is hereby dismissed with costs.

Ordered accordingly.

**J. R. KARANJA**  
**JUDGE**

**(Read and signed this 14<sup>th</sup> day of April 2011 in the presence of Mr. Kiboi for respondent and Mr. Songok holding brief for Applicant).**