



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**MISCELLANEOUS CIVIL CASE NO. 394 OF 2009**

**ROBERT NYAMUHANGA.....APPLICANT**

**VERSUS**

**FRANCIS MUIRURI NJANE.....RESPONDENT**

**RULING**

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 reason 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> April 2009. This application was filed on the 16<sup>th</sup> June 2009. This was a delay of about one and a half months which cannot be said to have been inordinate. The reason for the delay is that the applicant was at the material time a military officer and out of his duty station at the time of Judgment. Due to this, he received the notification of Judgment shortly after the time for appeal had lapsed.

The Court may take judicial notice of the fact that military officers are prone to movements all over the country even though generally based at any given barracks.

For that reason, the applicant is entitled to the exercise of discretion in his favour. Consequently, the application is granted but on condition that the intended appeal be filed (if not already filed) and/or prosecuted within the next three (3) months from this date hereof subject to the Court diary.

In default, each party be at liberty to apply.

**J. R. KARANJA**

**JUDGE**

**[Delivered and signed this 14<sup>th</sup> day of April 2011]**