

The court has listed the following points for consideration:-

- a) **The length of the delay.**
- b) **Reasons for the delay.**
- c) **Chances of the appeal succeeding if the application is granted.**
- d) **Discretion of the court.**

Section 79G of the Civil Procedure Act allows this court to extend time for filing appeals from subordinate courts. The proviso to the section is that the Applicant:-

“..... satisfies the court that he had good and sufficient cause for not filing the appeal in time.....”

The applicant herein states that he was taken ill and suffered lapse of memory. The reasons given for not annexing a medical report in support is that he sought traditional intervention for his condition. In January 2010 he recovered and instructed his counsel. He swore his affidavit on the 5th March, 2010 and then filed the application in court on the 9th July, 2010 the same was then first prosecuted on the 8th November, 2011.

The Ruling of the subordinate court was delivered on the 19th March, 2009 and it has taken the applicant a period of over two (2) years to file and prosecute the application for enlargement of time.

The delay can only be described as inordinate in the circumstances I find that the applicant has not moved expeditiously in the circumstances. This same sequence of events is likely to occur if the appeal is filed.

I also concur with counsel for the Respondent that the applicant only made a move when confronted with the Proclamation.

Nothing is tendered or adduced as to the chances of the appeal succeeding, the only reason given is that it is in the interest of justice and fair play that he be granted leave. The applicant states that since there are issues relating to land and he will suffer if not granted leave and urged the court for a chance to be heard on merit as the matter had been disposed of on a Preliminary Objection.

The applicant also urged the court to exercise its discretion.

The court can indeed exercise its discretion but the applicant must satisfy the court by giving the court a justifiable, acceptable and or reasonable explanation to enable the court exercise this discretion in his favour.

I find that there has been an inordinate delay in filing and prosecuting this application. The explanation given for the delay is not satisfactory. The application is merely an afterthought and the applicant by his conduct shows a lack of seriousness. The applicant has not shown the court the chances of success of his appeal.

In the circumstances I find that the applicant has not given good grounds to enable this court grant the leave sought.

The application is hereby dismissed with costs to the Respondent.

DATED AT ELDORET THIS 11TH, DAY OF NOVEMBER, 2011

A. MSHILA
JUDGE