



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Miscellaneous Civil Application 51 of 2009

JANET JERUTO TULONG (Suing as the legal
representative and guardian of MAUREEN JEPKOECH and
LAURENCE KURUI APPLICANT

VERSUS

SYMONGOK CHESANG RESPONDENT

RULING

By this Notice of Motion brought under Section 3A and 79G of the Civil Procedure Act, the applicant has sought orders that this Court be pleased to extend time within which to lodge an appeal from the judgment and decree in Senior Resident Magistrate's Court at Kabarnet Maintenance Cause No. 3 of 2008 between Janet Jeruto Tulong (suing as the legal representative and guardian of MAUREEN JEPKOECH and LAURENCE KURUI Versus SYMON SONGOK CHESANG. The application is premised on the grounds stated on the body of the Notice of Motion and supported by an affidavit sworn by Janet Jeruto Tulong.

The respondent was served with this application but did not file any papers in opposition to the same. The main grounds for this application are that the proceedings and decree of the lower Court were never supplied on time and that the applicant fell sick and was not able to instruct his Lawyers to file appeal within the statutory period.

In an application where the Court is being called upon to exercise its unfettered discretion to extend time within which to lodge an appeal, all that the applicant is required to do is to place sufficient material before the Court explaining the reason for the delay.

In **LEO SILA MUTISO V. ROSE HELLEN WANGARI MWANGI CIVIL APPEAL NO. NAI. 251 OF 1997** the Court of Appeal stated:-

“It is now settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are first the length of the delay, secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly the degree of prejudice to the respondent if the application is granted.”

The applicant blames the delay on the Court in that he was supplied with the judgment late. But there is no certificate of delay supplied by the Court to confirm the same. Secondly, the copy of the judgment against which the appellant intends to appeal is not attached

and hence it is not possible for the Court to assess the chances of the appeal succeeding.

In this application the delay is not explained to the satisfaction of the Court. In RAT MAN V. CAMAVASAMY [1964] 3 ALL ER 933 Lord Guest at P. 935 said:-

“The rules of the Court must prima facie, be obeyed, and in order to justify a Court in extending the time during which some step in procedure requires to be taken there must be material on which the Court can exercise its discretion. If the law were otherwise a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time lable for the conduct of litigation.”

The above passage has been quoted with approval by the Court of Appeal in GRINDLAYS BANK INTERNATIONAL (K) LIMITED V. GEORGE BANBOUR – CIVIL APPLICATION NO. NAI. 257 OF 1995 and TRADE BANK LIMITED (IN LIQUIDATION) V. L.Z. ENGINEERING CONSTRUCTION LIMITED AND ANOTHER – CIVIL APPLICATION NO. NAI. 282 OF 1998.

I have carefully considered submissions by Counsel and I have come to the conclusion that this application lacks in merit. The upshot of the foregoing is that this application fails and is dismissed with no order as to costs.

DELIVERED AND DATED AT ELDORET THIS 9TH DAY OF FEBRUARY, 2010.

**J. L. A. OSIEMO
JUDGE**