



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Miscellaneous Application 688 of 2009

**FRANCIS DRUMMOND INVESTMENT BANK LTD
T/A FRANCIS DRUMMOND & CO. LTD.....APPLICANT**

VERSUS

KEITH HOWARD OSMOND.....RESPONDENT

RULING

1. Francis Drummond Investment Bank Ltd, t/a Francis Drummond & Co. Ltd seeks leave of this court to file his appeal out of time. Kingori Gathenji who is the executive director of the applicant has deponed that although summary judgment was delivered against the company on 26th June, 2009, he was unable to instruct the company's advocate in time because of two reasons: Firstly he got married on 16th August, 2009 and thereafter proceeded on a honeymoon and only returned to his office in mid-September. Secondly, there was a delay in instructing the company's advocate because there was a change in the firm of advocates who were handling the matter.
2. Mr. Kingori Gathenji has also sworn a supplementary affidavit in which he explains that the firm of Mungai and Co. Advocates was instructed to take over the conduct of this matter on behalf of the applicant from the firm of Mamicha & Company Advocates, and that leave was granted to the current advocates to come on record on 14th October, 2009. Mr. Mungai who appeared for the applicant, reiterated that the applicant's counsel was not able to file the appeal in time because of delay in getting instructions. Mr. Mungai submitted that the applicant's appeal has high chances of success and maintained that no prejudice will be suffered by the respondent as it has already been paid the full decretal sum. Mr. Mungai relied on *HC.Misc.286 of 2009 Hellen Wanza Maeke vs Bernard Njoroge Gathua & another* and *Misc. Civil Application No.512 of 2008 Woche Imala vs Adan Chula Sode*.
3. The application is opposed through grounds of opposition filed on 20th November, 2009 in which it is contended inter alia, that the applicant has not exhibited the judgment or decree which it wishes to appeal against, nor has it exhibited any draft memorandum of appeal. The respondent further challenged the deponent of the supporting affidavit contending that he is not the officer of the respondent who has been involved in the transaction.
4. Miss Kulo who appeared for the respondent argued that the reasons given by the applicant for the delay in filing the appeal were not satisfactory. Miss Kulo further submitted that the judgment sought to be appealed against has already been satisfied and therefore the appeal was an afterthought.
5. I have given due consideration to the application which is before me. From the affidavit sworn in support of the application, it is conceded that the ruling subject of the intended appeal was delivered on 26th June, 2009. The applicant's director Kingori Gathenji depones that he got married on 15th August, 2009 and thereafter proceeded on his honeymoon. There was clearly a period of more than 6 weeks from the time the ruling was delivered and the time the executive director got married. The marriage and subsequent honeymoon of the director does not therefore provide any reasonable excuse for the failure to take action more than 6 weeks before the executive director got busy with his marriage and honeymoon.
6. Secondly, the issue of the applicant changing advocates, is not sufficient to explain the delay of about 3 months in failing to pursue the appeal. I am inclined to agree with the respondent that the applicant had no intention of filing this appeal hence the settlement of the decree. Indeed the lack of seriousness in filing the appeal is apparent from the failure by the applicant to file a draft memorandum of appeal to demonstrate that it has an arguable appeal. The applicant has failed to satisfy this court that he had a good and sufficient reason for not filing the appeal in time. Accordingly, there is no basis upon which this court can exercise its

discretion in the applicant's favour. The application for leave to file appeal out of time is therefore rejected.

Dated and delivered this 22nd day of March, 2010

H. M. OKWENGU

JUDGE

In the presence of: -

Mungai for the applicant

Advocate for the respondent absent

Eric - Court clerk