



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

**Miscellaneous Civil Application 158 of 2005**

**JACOB NJERU MUGO.....APPLICANT**

**VERSUS**

**BERNARD NJERU.....RESPONDENT**

**R U L I N G**

The application at bar is dated 2/6/2005. It seeks the leave of this court for the applicant to file an appeal out of time. The same is supported by the affidavit of E.M Njiru dated 20/6/2001. On that ground alone, this application should be struck out. I say so because an affidavit which was sworn 4 years before the application was filed cannot support the same. I also note that the documents referred to in the supporting affidavit i.e the request for proceedings, the certificate of delay and the draft Memorandum of Appeal referred to have not been commissioned and they have not actually been marked at all as exhibits. They have no relationship or nexus to the supporting affidavit whatsoever. The supporting affidavit on the other hand refers to annexures '*EMNI*', '*EMNII*' and '*EMNIII*'. Such annexures are not in this file or attached to the affidavit in question.

Further, from the replying affidavit, it is clear that the Applicant had filed HC Misc. Application No. 64 of 2001 in June 2001. That application marked Annexure '*BN1*' must therefore have been the one which was supported by the affidavit in question. The applicant has not disclosed to this court what could have happened to that application. He has not therefore come to court with clean hands.

In any event, if the court was to assume that there was no such application, that would mean that the applicant brought this Application 4 years after Judgment and that delay has not been explained. In my view, this application is an abuse of the court process. The orders sought are not merited. The applicant does not appear serious at all in his intent to appeal against the lower court's decision. I must in the circumstances dismiss this Application which I hereby do. The application dated 21/6/2005 is hereby dismissed with costs to the Respondent.

**W. KARANJA**  
**JUDGE**

Delivered, dated and signed at Embu this 24<sup>th</sup> day of May 2010.

**In presence of:- Mr. Utuku for Respondent.**