

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

Miscellaneous Civil Application 120 of 2009

**NJOKI WANJUKI NJUKI.....PLAINTIFF
VERSUS**

FRANCIS IRERI KIANDARI.....DEFENDANT

R U L I N G

The Application at bar is for enlargement of time to file an appeal out of time. The same is premised on Order XLIX Rule 5 of the Civil Procedure Rules. I agree with counsel for the Respondent that the same is defective as it ought to have been filed under Section 79(G) of the Civil Procedure Act which specifically deals with extension of time to file an Appeal out of time.

I will nonetheless not dismiss or strike it out on that technicality. I have considered the said application, the 3 grounds on its face along with the supporting affidavit and the grounds of opposition filed by Mr. Kathungu counsel for the Respondent. In order for such an application to succeed, the applicant needs to show that the delay in filing the application is not inordinate; the delay must be explained to the satisfaction of the court and the applicant must also show that the intended Appeal is not frivolous.

In this case, the judgment was entered against the Applicant and the same was delivered in her presence on 1.09.09. The record shows she was informed that she had 28 days to file an Appeal against it. She did not apply for the proceedings until 17.09.09. There is no plausible explanation as to why she waited that long. Even after the proceedings were supplied to her on 16.10.09, she did not file this application until 16.11.09. Again this delay has not been adequately explained. That delay would in my view however be excused if the Applicant had good chances of succeeding in her Appeal. I have gone through the proceedings and proceedings in the lower court's file. Clearly the Applicant has **Nil** chances of succeeding in appeal. She has no arguable Appeal at all. The plaintiff proved that he paid the amount of money he was sued for. He has not gotten any refund and he did not get the land. No court is going to make a different finding on the strength of that evidence.

The intended Appeal has no merit at all. For these reasons this Application must fail. I find the same lacking in merit and dismiss it with costs to the Respondent.

**W. KARANJA
JUDGE**

Delivered, dated and signed at Embu this 20th day of July 2010.

In presence of:- Ms. Njeru for Applicant and Mr. Kathungu for Respondent.