

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Miscellaneous Application 204 of 2008

PETER NYAKUNDI.....APPLICANT
VERSUS
STANDARD CHARTERED BANK (K) LTD...RESPONDENT

RULING

This is an application under **Section 79G** of the **Civil Procedure Act** for leave to appeal out of time. It is based on the ground that failure to file the appeal in time was due to circumstances beyond the Applicant's control. In the affidavit in support of the application, the Applicant deposes that though his advocates applied and paid a deposit for a typed copy of the proceedings on 17th November 2004 which was only 7 days after judgment was delivered, the same were not ready until October 2007. By that time his advocate had fallen sick. When he visited his offices in March 2008 and was advised to instruct another advocate, the time for filing an appeal had long expired hence this application.

The Respondents strongly oppose the application. In their view, the Applicant has been indolent and is therefore not deserving of the exercise of this court's discretion in his favour. If he had been diligent, he would have learnt of his advocate's sickness much earlier and taken appropriate action in time. Moreover, counsel for the Respondents further argued, the filing of the memorandum of appeal did not require proceedings.

I have considered these arguments. As the Court of Appeal stated in

Egerton University Vs Republic Ex-parte Ruga, [2004] 2 KLR 132, the discretion of the court to extend time like any other discretion, must be exercised judicially. It is not every delay that disentitles an applicant enlargement of time. The most important factor to be considered in such applications is whether or not the delay has been unreasonable. And the reasonability of delay depends on the peculiar facts and circumstances of each case.

In this case, it is not in dispute that soon after judgment was delivered, the Applicant's advocate suffered a debilitating stroke from which he is yet to recover. In the circumstances, I find that the delay has satisfactorily been explained. I therefore allow this application and order that the Applicant shall file his appeal within fifteen days of the date hereof. The costs of this application shall be costs in the appeal.

DATED and DELIVERED this 2nd day of July, 2010

D. K. MARAGA
JUDGE.