

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
MISC. CIVIL APPLICATION NO. 78 OF 2010

JOHN KANIU.....APPLICANT

VERSUS

JASON BUNDI GITARI.....RESPONDENT

R U L I N G

The Applicant herein is seeking this court's leave to file an appeal out of time. The Ruling in question was delivered on 18/11/2009. The proceedings were requested for and deposit for the same paid on 23/11/2009. The proceedings were nonetheless not availed to counsel for the Applicant until 3/6/2010. He filed this Application on 29/6/2010. The certificate of delay is annexed to the supporting Affidavit and so is the impugned ruling and the draft Memorandum of Appeal.

The Application is nonetheless opposed by the Respondent who states that the Applicant filed the Application 3 weeks after receiving the certificate of delay.

He says that the 3 weeks delay has not been explained and the Application should therefore be dismissed.

I have considered the application along with the rival affidavits and the annexures thereto. I have seen the Ruling in question. The same is quite sketchy and the magistrate did not actually give the reasons for arriving at the same. He merely said that there was no misconduct. He did not address fully the issues raised by the applicant to enable him make an informed decision on the same. In my view the intended Appeal is not frivolous. Further, a delay of 3 weeks cannot be said to be inordinate by any standards. I therefore find the application merited. I allow the same and grant the leave sought. The Appeal be filed within 15 days from the date hereof. Each party to bear the costs of this Application.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 24th day of November 2010

In presence of:- Mr. Mwai for Mr. Ndana for Applicant & Respondent in person.