

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

MISCELLANEOUS CIVIL APPLICATION NO. 160 OF 2009

AMOS OTIENO

MIRUKA.....APPLICANT

VERSUS

**THE BOARD OF GOVERNORS, MURANG'A HIGH
SCHOOL.....RESPONDENT**

RULING

AMOS OTIENO MIRUKA, the Applicant herein, has taken out the Notice of Motion dated 14th May 2009, in which he has applied for the extension of time to appeal against the decision of the Murang'a Principal Magistrate's Court delivered on 26th January 2009 vide **MURANG'A P.M.C.C. NO. 57 OF 2006**. The Motion is supported by the affidavit of Amos Otieno Miruka sworn on 14th May 2009. **MURANG'A HIGH SCHOOL**, the Respondent herein, opposed the Motion by filing the grounds of opposition dated 20th August 2009.

I have considered the oral submissions made by learned counsels from both sides and the material placed before this Court. Basically the Applicant is seeking leave to appeal out of time under *Section 79G* of the Civil procedure Act. Under the aforesaid Section the Court is given a wide discretion to extend time to appeal so long as the Applicant gives sufficient reason to explain the delay. The respondent herein has not filed a replying affidavit to controvert the averments contained in the supporting affidavit of the Applicant. The main issue raised in objection is that the aforesaid supporting affidavit is incurably defective. It is said that the aforesaid affidavit contains hearsay averments. I have carefully perused the aforesaid affidavit and I am unable to find that the same has hearsay averments. The truth of the matter is that the deponent has disclosed the source of his information. He has categorically stated that he was informed by his advocate that he could not prepare the Memorandum of Appeal because he had not been supplied with the typed proceedings. The respondent has not controverted that averment. I have no reason to doubt the veracity of that assertion in the absence of any contrary averments. There is an averment that the typed proceedings were supplied on 27th April 2009 when time to appeal had lapsed. Again this allegation is not challenged. I find the reasons advanced in support of the Motion to be plausible and sufficient. I hereby grant the Applicant extension of 15 days to appeal against the judgment of the Murang'a Principal Magistrate's Court delivered on 26th January 2009. Costs of the Motion to abide the outcome of the intended appeal.

Dated and delivered at Nyeri this 19th day of November 2010.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Macharia holding brief Nyigei for Respondent and Kiminda holding brief Mbutia for applicant.