



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**MISC. CIVIL APPLICATION NO. 119 OF 2009**

**JOEL ASAMIKHA..... APPLICANT**  
**(Suing on behalf of Free Line Church Mission)**

**VERSUS**

**ZACHARIA OGANDA..... 1ST RESPONDENT**  
**MUSA MATASI ..... 2ND RESPONDENT**  
**ELIJAH OKOYO ..... 3RD RESPONDENT**  
**ELIJAH OKOYO ..... 4TH RESPONDENT**

**RULING**

1. The Applicant herein, Joel Asamukha, seeks orders under S.79G of the Civil Procedure Act that leave be granted for him to prefer an appeal out of time. The intended appeal is against the Judgment in Hamisi SRM's Court Civil Case No. 71/2008. He also seeks that the draft Memorandum of Appeal annexed to his supporting Affidavit be admitted upon payment of the requisite court fees and in the meantime a stay of execution of the Judgment and decree aforesaid be granted.

2. From the supporting Affidavit sworn by the Applicant on 30.9.2009, and from the grounds in support of the Application, the Applicant attributes delay in filing the appeal to the fact that after the Judgment was delivered, he traveled to Mombasa on religious duties. That while there, he fell ill and was incapacitated. He was only allegedly able to return to his home in the Western Province after the time for filing an appeal had expired. That he therefore wishes to proceed with his appeal which he argues is clothed with merit.

3. Only the 1st Respondent filed a Replying Affidavit on 21.12.2009 and in it he urges the point that the Applicant knew of the Judgment and ought to have pursued his appeal before traveling to Mombasa and therefore no sufficient reason had been given why the Application should be granted. That the intended appeal is a mere afterthought and calculated to deny the Applicant the fruits of his Judgment.

4. From the above rendition of the contested facts, I am satisfied that the Applicant has shown that he is keen to pursue his appeal and to shut him out would be a travesty of Justice. Illness afflicts all and he has shown that he suffers from arthritis and is also an old man.

5. I will grant leave without further ado save that the Appeal must be filed within 14 days of this order. No stay of execution can be granted as I am unsure of the nature of the Judgment and decree that is being challenged. That prayer is dismissed.

6. Costs shall abide the appeal.

7. Orders accordingly.

Delivered, dated and signed at Kakamega this 14th day of October, 2010.

**ISAAC**  
**J U D G E**

**LENAOLA**