

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 673 of 2008

ESTHER WANJIRU.....APPLICANT

VERSUS

JOSEPH WAKARATU KARUMBA.....1ST RESPONDENT

FRANCIS KARUMWA GATHEKIA.....2ND RESPONDENT

R U L I N G

1. By a Notice of Motion dated 4th November, 2008, Esther Wanjiru, the applicant herein seeks to have time enlarged to enable her file an appeal against the judgment and decree of the Principal Magistrate in Milimani CMCC No. 4045 of 2004.
2. In her supporting affidavit sworn on 4th November, 2008, the applicant has explained that the judgment subject of the intended appeal was delivered on 28th June, 2006. That upon delivery of the judgment the applicant applied for certified copies of judgment and proceedings to enable her file an appeal but it was not until 10th July 2007 when the proceedings were ready for collection. The applicant explains that she has a good chance of succeeding in appeal. She has annexed a draft copy of the intended memorandum of appeal and prays that the Court do allow her application to enable her pursue her appeal.
3. Under Section 79G of the Civil Procedure Act, this Court has powers to admit an appeal out of time, provided, the appellant satisfies the Court that she has good and sufficient cause for not filing the appeal in time. Order XLIX Rule 5 of the Civil Procedure Rules, also allows the Court to enlarge time for the doing of any act or taking of any proceedings under the rules, as the justice of the case may require.
4. In this case, although it is alleged that certified copies of the judgment and proceedings were applied for after delivery of the judgment, the letter dated 10th July, 2007 which is annexed to the applicant's affidavit refers to a letter dated 3rd June, 2006. That implies that the application for certified copies of the proceedings and judgment were made well after the 30 days period had expired.
5. Moreover, even assuming that the Court were to give the benefit of doubts to the applicant and assume that the period from 28th June to 10th July, 2007 were necessary for the preparation of the certified copies of proceedings and judgment, the current application was not made until 4th November, 2008 which is about 5 months after the proceedings and judgment were ready for collection. The applicant has not given any explanation for this delay. An attempt was made by the applicant's counsel to explain from the bar that the applicant is a single parent of little means. However, there is nothing in the applicant's affidavit to support that contention.
6. I find that the applicant has not given any good explanation or sufficient cause for the inordinate delay in lodging her appeal. Accordingly, I find no justification for granting her application for extension of time to file the appeal. The application is therefore, dismissed.

Dated and delivered this 29th day of July, 2009

H. M. OKWENGU

JUDGE

In the presence of: -

Miss Yator for the Applicant

Advocate for the respondent, absent