



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**

**Miscellaneous Application 118 of 2009**

**MANASESSH KARIME NDAMI .....APPLICANT**

**Versus**

**JOEL CHEGE KINUTHIA ..... RESPONDENT**

**RULING**

Manasessh Karime, the applicant herein, took out the motion dated 30<sup>th</sup> march 2009 pursuant to the Provisions of Section 79(a) of the Civil Procedure Act and under Order XLIX rue 5 of the Civil Procedure Rules. In the aforesaid motion, the applicant sought for time to appeal against the ruling of the Murang'a SPM's court dated 26<sup>th</sup> January 2009 to be enlarged. The motion is supported by the affidavit of Karago S.N. sworn on 30<sup>th</sup> day of March 2009. Joel Chege Kinuthia, the Respondent herein, filed a replying affidavit of Lawrence Mwangi Kinuthia to oppose the motion.

It is the submission of Mr. Karago, learned advocate for the applicant that the applicant delayed to file an appeal within the time set by law because he was not supplied with the typed proceedings by the trial court. He annexed to the supporting affidavit a copy of the letter dated 27<sup>th</sup> January 2009 addressed to the Senior Principal Magistrate requesting to be supplied with proceedings. The applicant further annexed to the supporting affidavit a copy of the certificate of delay dated 30<sup>th</sup> March 2009 which indicated that the typed proceedings and ruling were supplied on 27<sup>th</sup> March 2009. On 31<sup>st</sup> March 2009, this application was filed. It is the submission of the applicant that the intended appeal has high chances of success.

The Respondent opposed the motion on the ground that the application is meant to delay the determination of the dispute. It is also argued that the intended appeal has no chance of success.

I have considered the oral submissions tendered by both sides plus the material placed before this court. There is no doubt that under S. 79G of the Civil Procedure Act, this court is given an unfettered discretion to enlarge time so long as good grounds are put forward. The main ground put forward by the applicant is that there was a delay by the trial court to supply the typed proceedings and ruling. The Respondent did not contest this submission. I am convinced the reason advanced is plausible hence I am satisfied that I should exercise my discretion in favour of the applicant. It has been said that the intended appeal has no triable issues. I have carefully perused the intended memorandum of Appeal and I am of the view that the same raised triable issues. For example there is a ground which is to the effect that the learned trial magistrate decided on an issue which was not pleaded by the Respondent. It is also alleged that the trial court gave a contradictory judgment.

For the above reasons I am convinced that the motion dated 30<sup>th</sup> March 2009 has merit. I hereby give the applicant leave of 15 days to file an appeal out of time. Costs of the motion to abide the outcome of the intended appeal.

Dated and delivered this 11<sup>th</sup> day of November 2009.

J.K. SERGON

JUDGE