

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

Misc. Appli. 968 of 2007

JOSHUA KYALO MATHEI.....PLAINTIFF/APPLICANT

-VS-

KENAFRIC INDUSTRIES LIMITED.....DEFENDANT/RESPONDENT

RULING

In this Notice of Motion dated 14th December 2007 filed on 21st December 2007, the Applicant wrongfully described as the Appellant, has applied for leave to file appeal out of time the Judgment to be appealed from having been delivered on 17/5/2007, his application for proceedings being dated 11/6/2007, and the relevant copy of Proceedings and Judgment having been obtained on 7/11/2007.

The Notice of Motion is opposed by the Respondent and on the basis of the Applicant's own authority in the case of Janet Ngendo Kamau –versus- Mary Wangari Mwangi in the Court of Appeal Civil Application No.NAI.338 of 2002 where P.N. Waki J.A. quoted a passage from Leo Sila Mutiso –versus- Rose Hellen Wangari Mwangi, Civil Application No. NAI 255 of 1997 (UR) stating:

“It is now settled that the decision whether or not to extend time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first, the length of the delay; secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and fourthly, the decree of prejudice to the responded if the application is granted;”

and bearing in mind that what the Applicant has brought before me in this Notice of Motion is only the said Notice of Motion, its supporting affidavit, the letter to the Court asking for Proceedings and the reply thereof; this Notice of Motion is hereby dismissed with costs to the Respondent for the reasons that the matters which this Court should take into account in deciding whether to grant the extension of time asked for has not been sufficiently exhibited and therefore proved.

Dated and Delivered at Nairobi this 21st day of February 2008.

J.M. KHAMONI

JUDGE