

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

MISC CIV APPLI 5 OF 2005

LEAH WANJA THEURI APPLICANT

versus

NDIRANGU KARANJA RESPONDENT

RULING

The Applicant by an application dated 25th January, 2005 sought leave to file an appeal out of time in respect of a judgment of PMCC No. 254 of 1990 Nyeri. The judgment was delivered on 16th March 2004. That application came up for hearing on 7th July 2005. On that day the Applicant sought and obtained leave to file a supplementary affidavit within Seven days from that date. The Applicant did not file the affidavit until 21st July 2005. That was clearly Seven days out of the time period given to file the same. The Applicant now has moved the court by Notice of Motion dated 15th August 2007. By that application that Applicant seeks leave to enlarge time to file that affidavit. In support of that application the Applicant stated that she attended her advocate's office on 8th July 2005 in order to sign that affidavit. She did not find her advocate in the officer. On returning home she had difficulty getting bus fare to again attend her advocate's office. That it was not until 21st July 2005 that she obtained bus fare and was able to travel to her advocate's office and did sign the affidavit on that day. In the replying affidavit the Respondent said that the Applicant was economical with the truth. The Respondent doubted whether the Applicant had attended her advocate's office. The Respondent also faulted the application for having been filed two years after the affidavit was filed.

I have considered the application before court. It is correct that the Applicant has delayed in firstly filing the supplementary affidavit and much more in filing the present application. The reason given for not signing the affidavit by the Applicant that is because of the lack of money is in my view reasonable excuse. It is after all a reality for majority of the population in Kenya that they are challenged in respect of money. The delay in filing the supplementary affidavit was just a few days and I am therefore of the view that the Applicant should benefit from the exercise of my discretion and I do hereby enlarge the time of filing the Applicant's supplementary affidavit to the 21st July 2005. The affidavit already on record is hereby deemed as filed within time. It should be noted however that the Applicant was ordered in this matter on the 24th July, 2007 to pay court adjournment fees. As far as I can discern those fees have not been paid. It is therefore my order that until the adjournment fees in respect of the order of 24th July 2007 are paid no further dates will be given to the Applicant in this matter.

Orders accordingly.

DATED AND DELIVERED THIS 19TH DAY OF MARCH, 2008.

MARY KASANGO

JUDGE