

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Misc Appli 14 of 2008

KIAMICIRI CATHOLIC CHURCH TRUSTEE OF DIOCESE OF MURANG'A

BISHOP PETER KIHARA.....APPLICANTS

VERSUS

MUNYI MURAGE MUTHONDU.....RESPONDENT

RULING

Notice of Motion dated 1/2/2008 seeks order to enlarge time for filing an appeal against Judgment of Senior Resident Magistrate Court dated 9/3/2007. Application is supported by affidavit of advocate who represented the applicant in the lower court.

The applicant applied for proceedings and a certificate of delay has been issued and that the same was supplied on 23/1/2008 and the delay was caused by pressure of work in the court Registry. The certificate shows that it was dated 11/10/2007 but signed on 23/1/2008. There is a Replying affidavit by Respondent Murage Munyi Muthomi who confirms that Judgment was read at Kerugoya on 9/3/2007 and time to file appeal was given.

However the certificate of delay shows that the application for proceedings on 13/3/2007 four days after dated of Judgment and that the proceedings were supplied on 21/9/2007 almost 4 months after the date of application. That period has to be deducted from the period allowed. Then certificate was then dated 11/10/2007. Therefore the period of 30 days will be counted from date of Judgment excluding the days taken in supplying the proceedings. Then the certificate to confirm was not signed until 23/1/2008 and this application was filed on 1/2/2008 after 7 days. It is clear the delay occasioned is explained

Upon perusing the grounds of appeal it is alleged no service was ever affected. That the defendant was not a legal body. That the land involved was allocated in the names of other persons.

There are important points of law which should be argued. The granting of extension of time is in the discretion of court in this case. It is my finding that the delay is explained and there are important issues of law raised in proposed appeal. I exercise my discretion in favour of Applicant and allow the application. The proposed appeal shall be filed within the next 14 days.

Costs to the Respondent.

Dated this 25th April, 2008.

J. N. KHAMINWA

JUDGE