

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Misc. Appli. 111 of 2008

MUTHONI KABUI APPLICANT

Versus

BEATRICE WAKABARI KARIMI

JEMMIMAH WAWIRA KARIMI

JANE NJERI KABUIRESPONDENTS

RULING

The applicant has brought before court a notice of motion dated 28th May 2008. By that application she seeks an order for the extension of time to file the appeal and for leave to file that appeal. In the affidavit in support of that application the applicant sets out the sequence of events that occurred before the application. She deponed that judgment was entered in Kerugoya Succession Cause No. 92 of 2005 on 4th April 2008. She was dissatisfied by that judgment and instructed her advocate to appeal. Her advocate applied for proceedings on 16th April 2008. A deposit for those proceedings was paid on 24th May 2008. The proceedings were not supplied by the lower court until 27th May 2008. This application for extension to file the appeal was filed on 30th May 2008. The lower court issued a certificate of delay showing that the proceedings could not be supplied until 27th May 2008 due to pressure of work in the typing pool of the lower court. The application was opposed by the respondents. In opposition the respondent stated that there was a delay of 12 days before the applicant applied for proceedings from the date when judgment was read. In the respondents view those 12 days were not explained. Further that the applicant did not pay the deposit for proceedings until 23rd of April 2008. That the applicant further failed to attach the final receipt of the payment for proceedings. The respondent further faulted the certificate of delay and stated that it did not give a clear picture of events. In my view the delay of 12 days before applying for proceedings was not inordinate. After all it should be accepted that a party would need to take time to consider the judgment delivered and to take counsel whether to appeal. The argument that the applicant delayed in paying for proceedings cannot be a basis for refusing the orders sought because no evidence has been placed before court to show that the assessment of the deposit payable was made by the court immediately. The respondents in my view were wrong to have faulted the certificate of delay which after all is generated by the court. Any fault of that certificate can only be laid at the door of the court.

I have considered the applicant's application in its entirety and I am satisfied that the same is indeed merited. Accordingly the court does hereby grant the following orders:

- 1. The applicant Muthoni Kabui is hereby granted leave to appeal against the judgment of Kerugoya Succession Cause No. 92/05 and is further granted leave to file such an appeal out of time. The applicant shall file such an appeal within 21 days from this date hereof.*
- 2. The applicant shall pay to the respondent the costs of notice of motion dated 28th May 2008 in any event.*

MARY KASANGO

JUDGE

Dated and delivered at Nyeri this 27th day of October 2008.

BY

M. S. A. MAKHANDIA

JUDGE