



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KAKAMEGA

Misc Civil Appli 7 of 2007

ALI KUTSUSHI WANZETSE APPLICANT

V E R S U S

JANET KHAVANDITSA INDESIA RESPONDENT

R U L I N G

The applicant has moved the court pursuant to the provisions of **section 79 G** of the Civil Procedure Act. He seeks leave to appeal out of time.

Mr. Mwebi, the learned advocate for the applicant informed this court that his client was unrepresented in the Lower Court.

The said Lower Court in this instance was the Kadhi's Court, Bungoma. And the decision in respect to which the applicant is desirous of preferring an appeal, was delivered on 31st October 2006.

According to the applicant, he was aggrieved with the decision handed down by the Hon. Kadhi. He was therefore desirous of appealing against the said decision.

To that end, the applicant says that he applied for copies of the proceedings and the judgement. However, it was not until 2nd February 2007, that the Kadhi's court provided him with the said copies.

By that date, it was too late to file the intended appeal. It was for that reason that the appellant was now asking this court to grant him leave to appeal out of time.

He expressed the view that his intended appeal had high chances of success. And, in an Endeavour to persuade this court that he had good chances of success in the appeal, the applicant drew my attention to the grounds cited in his memorandum of appeal.

First, he faults the Hon. Kadhi for granting orders which had not been sought by the respondent.

Secondly, he points out that the Hon. Kadhi ordered some iron sheets be refunded to the respondent's brother, whereas the said brother was not a party to the proceedings.

Thirdly, the applicant contends that the entire proceedings before the Hon. Kadhi were defective and a nullity.

The applicant also intends to show the appellate court that the respondent not only failed to prove her claim, but also that the applicant's counter-claim was wrongly dismissed, yet there had been sufficient evidence to prove it.

Finally, the applicant intends to demonstrate to the appellate court that the Hon. Kadhi erred in finding that the respondent was incapable of filing suit and obtaining the relief sought, just because she had changed from Islam to Christianity, and had co-habited with a man before divorce.

Although the respondent was duly served with the application, she did not attend court. Also, she did not file either a Replying Affidavit or grounds of opposition. In the event, the application is unchallenged.

Furthermore, I am satisfied that the issues which the applicant intends to raise are worthy of serious substantive consideration, so that the dispute between the parties may be determined comprehensively and with appropriate finality.

Accordingly, I allow the application. The intended appeal shall be filed within the next 21 days from today.

The applicant shall meet costs of the application, in any event.

Dated, Signed and Delivered at Kakamega, this 16th day of October 2008

FRED A. OCHIENG

J U D G E