

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc. Civ. Appli. 503 of 2008**

CLAYWORKS LTD..... APPLICANT

VERSUS

DAVID GITAHI NJUGUNA.....RESPONDENT

R U L I N G

Clayworks Ltd (hereinafter referred to as the applicant), is aggrieved by the judgment of the Resident Magistrate in RMCC No.454 of 2006 at Gatundu delivered on 17th June, 2008. The applicant has now come to this court by way of a notice of motion filed on 21st August, 2008 seeking to have time extended to enable it file and serve the intended appeal. The application is supported by an affidavit sworn by a legal officer of the applicant's insurer, wherein it is explained that the delay in filing the appeal, was primarily caused by the fact that the judgment was delivered on 17th June, 2008 without notice to the applicant or his advocate and that the applicant's advocate only came to know about the judgment about a month later when they received a letter from the respondent's advocate demanding settlement of the judgment.

David Gitahi, the respondent herein objects to the application on the grounds that there has been no explanation to the one month delay from the time applicant's advocate was informed of the judgment to the time this application was brought.

I have considered the application. Time for filing an appeal ordinarily starts to run from the date of the decree or order appealed against. However, in a situation such as this one, where a party has not had notice of delivery of the judgment, it would not be fair nor just to compute the period of 30 days from the date of the decree when the party had no notice of the decree or judgment. It is evident that the applicant was alerted about the judgment through the letter from the respondent's advocate received by the applicant's advocate on 24th July, 2008. Essentially that is the earliest date when the applicant can be taken to have had notice of the decree. The application was filed on 21st August, 2008, which is a period of less than 30 days from the time the applicant had notice of the decree. There was no inordinate delay as the period was necessary for the applicant's advocate to contact his client and take appropriate instructions. I therefore allow the applicant's notice of motion dated 21st August, 2008 and make orders as follows: -

- (i) The applicant shall file and serve his memorandum of appeal within 15 days from the date hereof.
- (ii) Costs of this application shall be in the intended appeal.

Those shall be the orders of this court.

Dated and delivered this 9th day of October, 2008

H. M. OKWENGU

JUDGE

In the presence of: -

Miss Onyango for the applicant

Advocate for the respondent absent