



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**MISC CIV APPLI 104 OF 2006**

**SAMUEL WAWERU WANG'OMBE..... APPLICANT**

**VERSUS**

**MOHAMED ABDI OSMAN.....1<sup>ST</sup> RESPONDENT**

**ABDIRIZAR PARAH NOOR.....2<sup>ND</sup> RESPONDENT**

**RULING**

In this application the applicant seeks order to extend time within which to file an appeal from the Judgment of a lower court. **(Baricho RMCC No. 19/2005).**

The application is based on grounds stated on application and there is a supporting affidavit by Counsel. This ruling applies to this file and file **No. 105/06**. There is a filed document titled Certificate of delay confirming that certified copies of proceedings and judgment were applied for 2/6/2006 and were supplied on 25<sup>th</sup> July 2006. This application was filed on 24/8/2006. The reasons for delay are attributed to the failure by the court to supply the necessary documents within time to enable appeal to be filed within prescribed time.

The application is opposed. The Respondent in his replying affidavit says that the delay is not justified and no reasonable explanation of delay was given in the application. Several authorities have been cited. In similar circumstances "***Kuloba- Judicial Hints on Civil Procedure***" states the right of appeal having been created by statute, the requirements prescribed for appealing must be strictly complied with. Each application must be decided in particular circumstances but as a general rule the Applicant must satisfactorily explain reason for delay. He further says "**There may be special circumstances that may justify the court to refuse to extend time**". The applicant must show whether the appeal has any merits and ground and reasons of appeal. Where there is too long unexplained delay in applying for the record sufficient reason is not shown. An appellant must exercise his right to appeal with diligence to avoid prejudicing the other party. That was in the case of ***Pollock House Ltd vs Nairobi Wholesalers Ltd*** 1972 ***EA 172*** in the cause **No.42 of 2005** it was said "**Although certified copies of proceedings are not required to file memorandum of appeal. The applicant needs a typed copy of Judgment to prepare the memorandum of Appeal**"

In the present case the facts show that Judgment was delivered in court on 26/5/2006 afterwards application on 2/6/2006 for proceedings presented on 25/6/2006 and this application was not filed until 24/8/2006. Time starts to run as from the date the typed Judgment is delivered. In this case the delay in filing this application is about 30 days. This is a long period.

On the issue of the merit of appeal this case arises out of traffic accident where applicant suffered personal injuries. The learned Trial Magistrate dismissed the suit that medical evidence was given by a non registered medical practitioner. Counsel for applicant says that this evidence should not have been dismissed. It appears to me that this is an issue which should be argued at an appellate level with both parties having a good chance to argue their case.

For that reason and other special circumstances in this case I allow time application with costs to the Respondent. He will not be prejudiced since the judgment in lower court was in his favour. This order applies to application in Misc. Case No. 105 of 2006 which arose in similar circumstances proposed

appears to be filed within next 14 days.

**Dated this 16<sup>th</sup> of January, 2007.**

**J. N. KHAMINWA**

**JUDGE**

In presence of Mr. Mugambi

Respondent –Absent.

**J. N. KHAMINWA**

**JUDGE**