



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU**

Misc Civil Appli 7 of 2007

ERICK GITONGAAPPLICANT

VERSUS

LUKA GITARI M’ABETA1ST RESPONDENT

AUTO SELECTION (K) LTD 2ND RESPONDENT

BASELINE SERVICES 3RD RESPONDENT

RULING

This application was argued *ex parte* after the respondent who had been duly served failed to respond to it or appear on the hearing date.

The applicant is seeking leave to file an appeal against the decision in CMCC No.319 of 2003 out of time. He has explained that the delay has been occasioned by the late supply of certified copies of the proceedings and judgment by the court.

He has also deposed that the appeal has high chances of success. I have considered this application carefully. The decision intended to be appealed against was delivered on 4th August, 2006. A letter is annexed to the application dated 14th August, 2006, addressed to the Executive Officer, Meru Law Courts, by advocates for the applicant seeking certified copy of the judgment.

Also annexed is a copy of a receipt issued on 18th August, 2006 for the certified copy of the judgment.

This application was filed on 17th January, 2007. It took the court 14 days from 4th August, 2006 to 18th August, 2006 to supply certified copy of the judgment. It took the applicant between 19th August, 2006 when he actually received the certified copy of the judgment, to 17th January, 2007, approximately five months, to file this application.

Section 79G of the Civil Procedure Act provides that;-

“79G. Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period anytime which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a

copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time”.

Clearly the contention by the applicant that the delay was occasioned by the court cannot be correct in that certified copy of the judgment was supplied to him within 14 days of delivery of the judgment.

The proviso to Section 79G donates unfettered discretion to the High Court. The only duty on the applicant is to satisfy the court that he has a good and sufficient cause for not filing the appeal within the prescribed period. No period of delay is short or long so long as sufficient explanation is offered by the applicant.

In this regard a delay by the applicant of over five months has not been sufficiently explained. I am therefore entitled to make a finding that the applicant is guilty of inordinate and unexplained delay.

I accordingly order that this application be and is hereby dismissed.

I make no orders as to costs.

DATED AND DELIVERED AT MERU THIS 11th DAY OF May, 2007

W. OUKO

JUDGE