



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

MISC CIVIL CASE 33 OF 2007

HARRIET KABUNI PLAINTIFF

VERSUS

TERESIA MWAKIRIA NAMESIO 1ST RESPONDENT

P.C. PIUS SAWE 2ND RESPONDENT

SECRETARY GENERAL3RD RESPONDENT

RULING

This is an application by way of Notice of Motion brought under Section 79G of the Civil Procedure Act seeking leave for the applicant to file appeal out of time.

The judgment against which the appeal is sought to be lodged was delivered on 23rd November, 2006. The applicant avers that she applied for copies of the proceedings and judgment on 24th November, 2006 and that the same were only supplied to her on 12th March, 2007. She therefore deposes that the delay in filing the appeal within the statutory period was not caused by her.

The application has been opposed by the 1st respondent who argues in her replying affidavit that the letter seeking copies of the proceedings and judgment is not stamped by the court and bears no date of receipt.

Secondly, the 1st respondent argues further, the applicant has not annexed a receipt to show that indeed the proceedings were paid for. That even after receiving the proceedings the applicant did not file this application but only did so when execution process began.

Section 79G aforesaid under which this application is brought provides that appeals from the subordinate court to this court shall be filed within a period of 30 days from the date of the decree or order.

In computing that period the time taken by the trial court to prepare and deliver the proceedings will be excluded. The section further provides 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.

In other words the applicant's only duty is to give a satisfactory explanation as to the delay. So that no delay is long or short so long as there is acceptable explanation for it.

The judgment in question was delivered on 23rd November, 2006. Within 30 days (23rd Dec.2006) from that date the applicant was expected to have filed her appeal.

Instead this application was brought on 3rd April, 2007, approximately 3 ½ months after the period allowed. It is incumbent upon the applicant to satisfy the court that he had good and sufficient cause for this period of delay. It is the applicant's contention that the delay was caused by the court in responding to her request for copies of the proceedings and judgment. She is relying on a letter dated 24th November, 2006 – written a day after the delivery of judgment and a certificate of delay dated 27th March, 2007.

The certificate confirms that the proceedings and judgment were applied for on 24th November, 2006 and that the same were supplied to the applicant's counsel on 12th March, 2007.

In this regard the period between 23rd December, 2006 and 12th March, 2007 is sufficiently explained and is attributable to the time taken by the court to prepare the proceedings and judgment. That leaves the period between 12th March, 2007 when the proceedings and judgment were supplied and 3rd April, 2007(23 days) when this application was filed. The applicant has offered no explanation for the 23 days delay from the date the proceedings and judgment were received.

The decision whether or not to extend time for appealing is essentially discretionary. But like all discretionary powers, it must be exercised judicially. Taking into account the foregoing and the proceedings and judgment annexed it is doubtful if the applicant's appeal has any chances of success.

For these reasons this application is dismissed with costs to the respondent.

DATED AND DELIVERED AT MERU THIS 15th DAY OF June, 2007.

W. OUKO

JUDGE