

REPUBLIC OF KENYA
HIGH COURT AT EMBU
MISC CIV APPLI 66 OF 2006

KATHUMBI RURIGI.....APPLICANT

VERSUS

DOUGLAS MAINA KANGANGI.....RESPONDENT

RULING

Application dated 28/2/2007 seeks to set aside court order made on 27/6/2006 and all consequential proceedings on the ground that the applicant was never served with the application dated 22/6/2006 and the application was heard ex parte to the prejudice of the applicant. The order granted on 27/6/2006 extended time to the applicant within which to file proposed appeal arising out of Judgment in **Wanguru RMCC No. 38 of 2003**. The applicant ground is that he was not served and therefore was denied his right to be heard. The replying affidavit sets out the facts as are recorded. Time for filing appeals from subordinate courts is specified under section 79 G of Civil Procedure Act. However in case the appeal is not filed within that time proviso thereof provides that an appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time. In this case the application was under certificate of urgency and the proposed appellant did satisfy the court that he had a good and sufficient cause for not filing the appeal within time. The Judgment was read on 4/5/2006 and application for proceedings was made on 5/5/2006 while the proceedings were supplied 8/6/2006. And the application was filed on 22/6/2006. Section 79 G allows for the time taken to prepare and deliver decree to the appellant. Therefore time had not expired. The time taken by court was only 34 days and time started running on 9/6/2006. By the time the Respondents approached the court believing they were late for 7 days the time allowed had not expired. The application was not necessary and therefore good and sufficient cause was shown.

It is my view that service of application to extend time in circumstances was not required. In fact the respondent is not required to be heard until the appeal is admitted to hearing under section 79 B.

I find no reason shown to warrant a review of the orders as prayed in this application lack of service does not in any way prejudice the applicant. The application is dismissed with costs to Respondent.

Orders accordingly.

Dated this 2nd July, 2007.

J. N. KHAMINWA

JUDGE

2/7/2007

Khaminwa – Judge

Njue -Clerk

Mr. Kathumbi Ririgi present in person

Ruling Read in his presence in open court.

J. N. KHAMINWA

JUDGE