



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc Appli 329 of 2007

ORDERMANN COMPANY (K) LTD.....PLAINTIFF

VERSUS

FERDINARD KOMBO.....DEFENDANT

RULING

The Applicant by this Notice of Motion is seeking orders to enlarge time to appeal against the judgment and decree dated 29th March 2007 in CMCC NO. 276 OF 2002.

In support of the application Mburu Mbugua Advocate for the applicant has sworn an affidavit in which he avers that judgment was delivered in the absence of the applicant and the applicant only became aware when he was served with Notice of Intention to execute on 21st May 2007 giving him 7 days within which to pay the decretal sum or face execution. On 21st May 2007 he perused the court file and noted that judgment was delivered on 29th March 2007 and he immediately applied for copies of proceedings and filed application without delay on 29th May 2007.

The application is opposed by the Respondent who has filed a replying affidavit sworn by Albert Khaminwa counsel for the Respondent in which he avers that the Applicant's application is an afterthought and bent on denying the Respondent the fruits of his judgment as it was filed after the Respondent served it with a Notice of Intention to execute.

He further avers that failure to monitor proceedings in court is not a reason to be allowed and such evidence cannot be condoned.

Mr. Mbugua for the Applicant submitted that the Applicant has an arguable appeal and that the delay was not inordinate while Mr. Khaminwa submitted that the delay is not explained and the Applicant only rushed to court when confronted with the execution process.

All that the applicant is required to do is to place sufficient material before the court explaining the reason the delay. In **LEO SILA MUTISO VS. ROSE HELLEN WANGARI MWANGI – CIVIL APPLICATION NO. NAIROBI 251 OF 1997** the Court of appeal said:-

“It is now settled that the decision whether or not to extend the time for appealing is essentially discretionary.

It is also well settled that in general the matter which the court takes into account in deciding whether to grant an extension of time are first, the length of delay. Secondly the reason for the delay and thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly the degree of prejudice to the Respondent if the application is granted.”

The judgment was delivered on 29th March 2007 and this application was filed on 29th March 2007. A delay of 2 months is not inordinate and it is explained.

In view of the foregoing I do think that this is a proper case in which to exercise my discretion in favour of the Applicant on condition that the Applicant deposits the decretal sum in court.

Accordingly the application is allowed. The Applicant to file appeal within 14 days from the date of this ruling.

Dated and delivered at Nairobi this 28th day of September 2007.

J.L.A. OSIEMO

JUDGE