

REPUBLIC OF KENYA

IN THE HIGH COURT

AT NYERI

Misc Civil Appli 116 of 2006

JOHN MWANGI KARIUKI.....PLAINTIFF/APPLICANT

Versus

GLADYS NJERI WAIGWA.....1ST DEFENDANT/RESPONDENT

CHRISTOBEL WANJIKU2ND DEFENDANT/RESPONDENT

IDAH NYAGUTHII KIMARU.....3RD DEFENDANT/RESPONDENT

RULING

The Notice of Motion dated 20th March 2006 is brought under *Sections 3A and 79G* of the Civil Procedure Act. It seeks the prayer that this Court will grant leave to the Appellant to file the appeal out of time. In his short affidavit the Appellant says that being aggrieved by the decision of the Central Province Provincial Land Dispute Appeals Committee by their award of 15th January 2003 he instructed his then advocate Ms Maina Karingithi & Co. Advocates to file an appeal. That the said appeal through no fault of his was filed on 9th November 2003 which was beyond the 60 days period allowed for lodging an appeal. The applicant prayed that the mistakes of his advocate should not be visited on him. In their replying affidavit the Respondents opposed the application. They contended that the fact that the appeal was filed out of time was brought to the attention of the Appellant by the Court on 12th July 2005. The Appellant despite being so informed did not file the present application until 20th March 2006. Further they content that they have filed an application for execution of the judgment of the tribunal before the Karatina Court. They concluded that the Appellant by his application intends to delay the conclusion of the matter.

I have considered the application. It is indeed correct that the appeal was filed out of time and further after being informed of its lateness the Appellant did not file the application until 8 months later. The Appellant's explanation for filing the appeal out of time is indeed understandable and does draw this Court to exercise its discretion in its favour. The Appellant being a layman says that he was unaware that his advocate had not filed the appeal in time. In view of the fact that he had instructed his advocate to file and according to him, his advocate failed to file it in time, I am of the view that the delay experienced in this matter is excusable. Indeed the present application for leave was filed by the Appellant in person. That being the case the Court is of the view that he might not have been aware of the consequences of that delay. I am of the view that justice in this matter will be well served by allowing the Appellant leave to appeal out of time. The orders of this court are as follows:

1. That the Appellant's appeal No. 145 of 2003 be and is hereby deemed as filed within time.
2. That the costs of the Notice of Motion dated 20th May 2006 are awarded to the Respondent in the appeal.

MARY KASANGO

JUDGE

Dated and delivered at Nyeri this 11th day of October 2007.

By M. S. A. MAKHANDIA

JUDGE