



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

**Civil Misc Appli 28 of 2004**

**SIMON KIMANI MUCHIRI.....APPLICANT**

**VERSUS**

**LUCY WANJIKU MWANGI.....RESPONDENT**

**RULING**

The applicant has brought before court a Notice of Motion dated 25<sup>th</sup> February, 2004. The applicant seeks an order of the court to extend time to the applicant to file the appeal against the judgment of 19<sup>th</sup> November, 2003 by Kerugoya Magistrate Court. The applicant in his supporting affidavit deponed that he was informed by his advocate that, proceedings were supplied by the Kerugoya Court on 5<sup>th</sup> February, 2004. The applicant further stated that certificate of delay was supplied to his advocate and the same is dated 23<sup>rd</sup> February, 2004. It is pertinent to note that the deponent did not annex the certificate of delay to his application. The deponent further stated that the appeal has overwhelming chances of success. It also ought to be noted that the applicant did not annex a memorandum of appeal to his application. The application was opposed by the respondent and opposition counsel for the respondent argued that the affidavit in support was incompetent because it related to matters that the appellant/applicant did not have first hand knowledge. In response to that application I find that the applicant stated the source of his information in his affidavit in support. What however I find defeat the applicant application is that the applicant stated in his affidavit that the certificate of delay was supplied to his advocate that he failed to annex the same to the application. The applicant also failed to annex the draft of memorandum of appeal. Those two failures causes the present application to be incompetent and the same does hereby fail the application. That Notice of Motion dated 25<sup>th</sup> of February, 2004 is hereby dismissed with costs to the Respondent.

Dated and Delivered at Nyeri this 13<sup>th</sup> Day of November, 2007.

**MARY KASANGO**

**JUDGE**