



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

**AT ELDORET**

**Misc. Civ Appli. 239 of 2005**

**MARY NJOKI NJENGA ..... APPLICANT**

**VERSUS**

**PETER MUIRURI ..... RESPONDENT**

**RULING**

Mary Njoki Njenga, who feels aggrieved by the decision of the Resident Magistrate Eldoret, delivered on 2/9/2005, has preferred this application in which she seeks an order to enlarge the time within which she should file her appeal.

Her grounds are that the delay which occurred as she sought legal representation is explainable; that the application was made at the earliest instance and finally that the respondent shall not be prejudiced by the order which she seeks.

The application is opposed on several grounds, but mainly that it is incompetent, devoid of merit and also that the intended appeal has no chances of success.

This appeal arises from a cause, which originally fell under the Children’s Act 2001, which Act also grants the Children’s Court the jurisdiction to deal with matters of review, variation, suspension or discharge of any orders, or to revive the same after their suspension or discharge (section 117). The Act also provides at its section 80, that appeals from the said Children’s Courts shall lie, at the first instance to this Court and at the second instance, to the Court of Appeal.

Order XLIV rule 5 of the Civil Procedure Rules, which she relies on stipulates that:

*“(1) Where the application for a review is heard by more than one Judge and the Court is equally divided the application shall be dismissed.*

*(2) Where there is a majority, the decision shall be according to the opinion of the majority.”*

It is however clear from the pleadings on record that what this applicant wishes is to file an appeal and not to seek an order of review, which latter order can only be obtained from the subordinate Court. Based on that account alone, I find that this application is incompetent and can not lie. I do therefore strike it out with costs.

She is at liberty to file another application.

Dated and delivered at Eldoret this 23<sup>rd</sup> day of March 2006.

**JEANNE GACHECHE**

**JUDGE**

Delivered in the presence of:

Mr. Obiero holding brief for Mrs. Nyaundi for the applicant

Mr. Nyachiro holding brief for Mr. Mbugua for the respondent