

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Misc 33 of 2006

JEREMIAH KARIUKI KAGEMA.....PLAINTIFF

VERSUS

PETER DIXON KIHAGI.....RESPONDENT

R U L I N G

Jeremiah Kariuki Kagema herein referred to as the Applicant has come to this court by way of notice of motion under order 49 rule 5 of the Civil Procedure Rules seeking orders of this court to have time enlarged to enable the applicant file an appeal out of time against the judgment of the Business Premises Rent Tribunal in Tribunal case No. 14 of 2001 delivered on the 15th December 2005. In an affidavit sworn on 13th February 2006, the Applicant explains that he applied for a certified copy of the judgment on 3rd February 2006 but when he received the same he realized that the judgment was wrongly dated to read 15th January 2005 and that he therefore returned the same for rectification. The applicant pleads that the delay was not inordinate as the proceedings were applied for in time.

The Respondent objects to the application. In the affidavit sworn by the Respondent's advocate Felix Kebuka Mwituria Wachira, it is contended that the applicant has not explained why it took him more than 1 ½ months to apply for judgment. It is also contended that the delay was inordinate and has not been satisfactorily explained. Mr. Kebuka further contends that the appeal has no chances of success because the Tribunal relied on the valuation reports from both sides to reach its judgment.

I have considered the affidavit in support of the application and the replying affidavit as well as the submissions made by both counsels. The applicant appears to have laid a lot of emphasis on the fact that the judgment was wrongly dated 15th January 2005. That however was neither there nor here as it did not preclude the applicant from filing his appeal.

It is evident from the applicant's affidavit that he applied for a certified copy of the judgment on 3rd February 2006, this was long after the period of appeal had expired. The Applicant has not made any efforts to explain why no action was taken from the time the judgment was delivered on 15th December 2005 until the period of appeal expired which was on or around 15th January 2006.

I have further considered the draft memorandum of appeal which was filed by the applicant and I do concur with the Respondent's advocate that the appeal does not have overwhelming chances of success. I find that the applicant has not given any just cause as to why this court should exercise its discretion in his favour.

I do therefore find no merit in this application and accordingly the same is rejected.

Dated, signed and delivered this 12th day of April 2006.

H. M. OKWENGU

JUDGE