



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

**Civil Misc Appli 48 of 2003**

**ERNEST MANYALA TISI T/A OKUKU CONTRUCTION.....APPLICANT**

**VERSUS**

**HARUN HASSAN SHARIFF.....RESPONDENT**

**RULING**

The Applicant, Ernest Manyala Tisi t/a Okuku Construction made an application to this court on 24.3.03 by way of Notice of Motion dated 25-2-03 seeking leave to appeal out of time against a ruling ostensibly delivered by the lower court in a civil suit whose particulars were given in the application. The application did not state the date of the Ruling and the annexures referred to in the affidavit of the applicant were not attached. During the hearing of the application, the court pointed out this fact to Mr. Kaburi, learned Counsel for the applicant, to which Mr. Kaburi said the failure to annex was not in bad faith. He did not remedy the position and the application proceeded without the annexures. It was during his submissions that Mr. Kaburi stated that the date of the Ruling or Judgement sought to be appealed from was 30/8/02.

In the absence of the annexures referred to in the applicant's affidavit, the court is in the dark as to the nature of and steps taken in the case in which the ruling or judgement was sought to be appealed against. Remarkably salient is not only the total lack of particulars of the said case, but also dates relating to the steps, if any, taken to appeal. Mr. Kaburi told the court that the applicant was ignorant and was sick for a long time. No evidence to this effect was furnished.

The application was opposed by Mr. Anziya, learned Counsel for the Respondent. He relied on the affidavit sworn by him on 23-1-04 on behalf of his client in opposition to the application which was titled, perhaps wrongly, as "affidavit in support" instead of "replying affidavit". In his view, the application lacked merit.

Under section 79G of the Civil Procedure Act, Cap 21 of the Laws of Kenya

an appeal from a subordinate court to this court is required to be filed within a period of thirty (30) days. Such period excludes the time deemed requisite for the preparation and delivery of a copy of the decree or order appealed against providing a certificate of delay to this effect is obtained from the subordinate court. No such certificate appears to have been sought or obtained. The court may also allow an appeal to be filed out of time if the appellant satisfies the court that he or she had good and sufficient cause for not filing the appeal in time.

The Applicant herein has made no effort to make out a case that he had a good and sufficient cause for not filing the appeal out of time. He did not explain the cause of the delay of more than seven months. He did not place before court the relevant material pertaining to the case in which the ruling or judgement sought to be appealed against was made. The application was hopelessly devoid of any merit.

I have no hesitation in dismissing it, which I hereby do. The Applicant shall bear the costs of the Respondent.

***Dated at Kakamega this 29<sup>th</sup> day of November, 2006.***

**G. B. M. KARIUKI**

# **JUDGE**