

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NYERI

Misc Appli 28 of 1995

JOSHUA MWANGI KABURO.....APPLICANT

VERSUS

EDITH MUTHONI

JOHN MUTHII

JOSEPH WANJOHI.....RESPONDENTS

R U L I N G

Joshua Mwangi Kaburo hereinafter referred to as the Applicant, seeks to have the orders made by this court on the 10th May 1995 reviewed, leave granted to him to appeal and time extended for him to file appeal out of time against the orders issued on the 15th November 1994 vide Kerugoya Resident Magistrate's Civil Case Number 205 of 1993.

In his supporting affidavit, the applicant maintains that he has good grounds of appeal against the orders issued on 15th November 1994 in the Resident Magistrate's Civil Suit Number 205 of 1993. He blames his former advocate for failing to annex copies of the proceedings and memorandum of appeal and urges the court to exercise its discretion in his favour.

Edith Muthoni Wambu who is one of the three Respondents has sworn an affidavit in response to the application in which she is urging the court to reject the application as the applicant failed to explain the inordinate delay of about 11 years from the time his previous application was dismissed. She maintains that the application has no merit, is frivolous, vexatious and an abuse of the process of the court.

I have considered this application and do concur with the Respondent that the Applicant has not explained the inordinate delay of 11 years that He has taken before bringing this application. Secondly, I am satisfied that the Applicant's previous application was heard on merit and the ruling delivered on 10th May 1995. The Applicant has not satisfied this court that there is an error apparent on the face of the record or that there is discovery of new and important matter, or any other sufficient reason that would justify this court reviewing the order made on the 10th May 1994.

I therefore find no merit in the application and I do dismiss it with costs.

Dated, signed and delivered this 28th November 2006.

H. M. OKWENGU

JUDGE