

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Misc Appli 78 of 2005

JAMES MAINA NGIRIRI.....APPLICANT

VERSUS

NJERI NGIRIRI.....RESPONDENT

R U L I N G

The applicant herein seeks leave of this court to file his intended appeal against the decision of the Senior Resident Magistrate Muranga delivered on 6th April 2005 in Murang'a Senior Resident Magistrate Number 188, of 2002 out of time. Although the applicant has not provided copies of the proceedings or judgment nor has He provided a copy of a draft memo of appeal. The applicant has provided a copy of the certificate of delay showing that He applied for copies of the proceedings and judgment on 6th April 2005 but that the same were not supplied until 1st July 2005. This application was filed shortly thereafter on 13th July 2005.

In his supporting affidavit the applicant has indicated that the subject of the suit is "land" and this has not been denied. The court has unfettered discretion to extend time for filing an appeal provided a good explanation has been given for the delay in filing the appeal. There is no requirement that copies of the proceedings and judgment or draft memorandum must be availed to the court before the court can exercise its discretion. At this stage the court is not concerned as to whether the appeal is arguable or whether it has merits, the court is only concerned with the reasons for the delay in filing the appeal. In this case the applicant has satisfied this court that there are good and sufficient reasons for failing to file the appeal in time. It is only fair and proper that He be given the opportunity to file his appeal.

I do therefore grant leave to the applicant to file his appeal within 10 days from the date hereof.

Orders accordingly.

Dated, signed and delivered this 4th day of December 2006.

H. M. OKWENGU

JUDGE