



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

**AT NYERI**

**Misc Civ Case 73 Of 2005**

**THIAYA MWIRIGI alias JOHN MACHARIA ..... PLAINTIFF**

**VERSUS**

**EMMA WAIRIMU WAITHAKA )**

**EUNICE WANJIKU WAITHAKA ) ..... DEFENDANT**

**RULING**

The applicant Thiaya Mwirigi alias John Macharia seeks leave of this court to file his intended appeal against the ruling dated 15<sup>th</sup> March 2005 delivered in Kigumo court on 8<sup>th</sup> April 2005 filed out of time. It is the applicant's contention that the certified copies of the proceedings applied for on 28<sup>th</sup> April 2005 were not supplied until 24<sup>th</sup> May 2005 after time had already expired. The applicant maintains that the intended appeal has good chances of success.

The Respondent objects to the application.

Having considered the application I find that the applicant took his time from 8<sup>th</sup> April 2005 when the ruling was delivered until 20 days later on 28<sup>th</sup> April 2005 when he applied for proceedings. This delay has not been explained.

When the proceedings were supplied to the applicants advocate on 24<sup>th</sup> May 2005 a Notice of Motion and draft grounds of appeal were not prepared until 22<sup>nd</sup> June 2005 and not filed in court until 29<sup>th</sup> June 2005. This further delay of over one month has not been explained. I find therefore no justification for extending time as the applicant has not been vigilant in pursuing his right of appeal.

The notice of motion dated 22<sup>nd</sup> June 2005 is accordingly rejected.

***Dated this 24<sup>th</sup> day of March 2005.***

**H. M. OKWENGU**

**JUDGE**