

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

HIGH COURT MISC. NO. 127 OF 2004

JOHNSON MBURU MUIRURI APPLICANT

VERSUS

JULIUS KANG'ARA NDEGWA DEFENDANT

R U L I N G

Jackson Mburu Muiruri seeks leave of this court to have time for filing his appeal against the judgment and decree in Muranga SPMCC 283 of 2002 enlarged so that he is allowed to file his appeal out of time.

The applicant contends that the delay was partly due to the time taken by the court in supplying the proceedings and judgment and also the inability of the applicant to raise funds to engage an advocate to pursue the appeal on his behalf.

The Respondent has through his advocate strenuously objected to the application contending that no good reason had been given for the delay in filing the appeal.

While it is evident that there was delay by the court in availing the proceedings and judgment between 16th January 2004 when judgment was delivered and 2nd March 2004 when the proceedings were supplied. The applicant took another 4 months before he brought this application.

Although the applicant has alleged that he was unable to raise funds to engage an advocate, the applicant has not revealed what work he does if any and what his means is. Nor has the applicant explained why he did not file the appeal in person. The applicant does not appear to be a person who is totally ignorant as he was able to initiate private proceedings against the Respondent.

I find that the applicant has failed to give any good explanation for his failure to file the appeal within time. Although the court has powers to enlarge time under order XLIX rule 5, such powers can only be exercised in deserving situations and not to aid an indolent litigant. I find no merit in this application and do therefore dismiss it with costs.

Orders accordingly.

H. M. OKWENGU

JUDGE

13/5/05

H. M. Okwengu – Judge

Gikaria – C/C Waweru holding brief for – present

Ng'ang'a for Respondent – present

Court: Ruling delivered in chambers.

H. M. OKWENGU

JUDGE