



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
MISC. CIVIL CASE NO.207 OF 2004

ELIAS ANYANGO ONDITI
APPLICANT.

VERSUS

WILSON ODONGO NYABONGE ASHA)
OCHIENG MATHEWS NYABONGE)
DISTRICT LAND REGISTRAR MIGORI DISTRICT)
ATTORNEY GENERAL)
RESPONDENTS
HARSON OKONGO OPIYO)
ONDEYO ORUWA)
ORINA ADHAWO)

RULING

The applicant seeks court to enlarge time for him to file appeal.

Judgment was delivered on 5th August 2004. He did not file appeal within 30 days. Mr. Nyakango explained that the delay was because he applied for proceedings from the lower court and the same were supplied late.

Mr. Ogutu opposed the application. He pointed out that the supporting affidavit has dates varying to the ones shown on the face of the record. The motion therefore is at variance with the supporting affidavit.

Further it was submitted that the applicant did not require proceedings to file appeal. The reasons he gave why he was late in filing appeal were not tenable. I have considered the application and the reply. Indeed the applicant did not need proceedings to file the appeal. He could have filed the appeal without the proceedings.

Also it is true that the dates on the face of the motion are at variance with the ones in the supporting affidavit but this was explained as typing error.

The applicant states clearly he was desirous to appeal and it seems it was his counsel who had the notion that he had to get proceedings first. I don't see any prejudice respondent will suffer if I allow this

application. He himself has appealed against the same judgment.

In the circumstances the application is allowed. Applicant granted leave to file his appeal within 15 days from today's date. He will also pay costs of this application.

Date 10th May 2005

KABURU BAUNI

JUDGE

cc. Mobisa

Mr. Nyakongo for Applicant.

N/A for Respondent.

KABURU BAUNI

JUDGE