



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**Civil Appeal 869 of 2004**

**VERONICA WANJIKU KAGUMA ..... APPELLANT**  
**VERSUS**  
**PETER KARANI MUTONYI ..... RESPONDENT**

**RULING**

This is an application for leave to file appeal out of time under Section 79 G of the Civil Procedure Act.

That Section states as follows:

***“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the Appellant of a copy of the decree or order:***

***Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”***

Judgment was delivered ex parte in this case on 25th October, 2002, and the Appellant promptly filed the Memorandum of Appeal on 21st November, 2002 within the time allowed under the law. However, the appeal was withdrawn in the mistaken belief that leave to file appeal was required, and had not been obtained. It was only when the application for leave was disallowed on 25th June, 2004, that the Appellant realized the mistake, and promptly thereafter filed this application.

In my view, the Applicant here has explained the delay sufficiently well, the same is excusable, and should, therefore, not be shut out of the seat of justice without being heard. I note that the Judgment here having been entered ex parte the Applicant has not been heard. The Applicant has shown seriousness by preparing and filing the Record of Appeal. She has an arguable appeal, and the Respondent has not shown what prejudice he will suffer if this application were allowed.

Accordingly, I allow prayer 2 of the application dated 7th July, 2004 and order that the Memorandum of Appeal be filed and served within the next 7 days.

Dated and delivered at Nairobi this 8th day of August, 2005.

**ALNASHIR VISRAM**

**JUDGE**