

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Misc Civ Case 563 of 2005

JOHN KAHIGA as substituted with NDUNGU MWAURA APPELLANT

VERSUS

GICHIA NGUGI 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.”

This is an old 1990 case in which Judgment was delivered on 11th April, 2003. The application for leave to file appeal out of time was first filed on 6th February, 2004, some 11 months after Judgment. There is no explanation for that delay which I believe is inordinate. The application was dismissed by this Court on 10th December, 2004 for having been filed incompetently by advocates who were not properly on record. Then, it took another four months to file this present application. Again, the delay is not explained.

In my view none of these reasons demonstrate “sufficient cause” envisaged by Section 79 G for not filing this appeal in time. The Applicant was represented by an advocate in the lower court whose duty it was to explain to him the Judgment, and his right of appeal. He does not say when, if at all, he applied for certified copies of the proceedings and Judgment of the lower court; he has not annexed a certificate of delay; and in any event he did not need the proceedings to file the Memorandum of Appeal. All he required was a certified copy of the decree or order sought to be appealed from. Even then, Order 41 Rule 1 of the Civil Procedure Rules provides that the certified copy of the decree or order may be filed later.

Accordingly, this application is dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 20th day of September, 2005.

ALNASHIR VISRAM

JUDGE