



**IN THE HIGH COURT OF KENYA AT NYERI**

**Misc Appli 73 of 2001**

**WAMBUI NGATIA ..... APPLICANT**

**VERSUS**

**LYDIAH MUTHONI WARUHIU ..... RESPONDENT**

**R U L I N G**

The applicant seeks leave of this court to have his memorandum of appeal filed outside the period consented to by the parties. It is the applicant's contention that the court file went missing immediately after the consent was filed and that it is only on the 14th April 2004 that the applicant was informed that the court file had been traced thereby rendering this application necessary.

The Respondent objected to the application maintaining that the applicant was guilty of inordinate delay. In an affidavit sworn by the Respondent's advocate, it was contended that although the consent was entered into on the 9th December 2002, the applicant took 51 days to file the same and this delay was not explained. It was further contended that although the availability of the file was confirmed on 10th March 2004 the applicant did not file this application until 30th June 2004 even though the application was dated 8th June 2004. That delay had also not been explained.

I have considered this application and do concur with the Respondent's advocate that the applicant has been guilty of inordinate delay which delay has not been adequately explained. In the circumstances there is no justification for this court exercising its discretion in the applicant's favour. I do therefore dismiss the notice of motion dated 8th June 2004.

Costs to the Respondent. Orders accordingly.

**Dated this 24th day of November 2005**

**H. M. OKWENGU**

**JUDGE**