

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUGOMA

Misc Civ Appli 87 of 2003

PETER NAZI.....APPLICANT

VS

MARTHA MUMITSI.....RESPONDENT

RULING

In a summons dated 2nd May 2003, Peter Nazi sought for leave to appeal out of time against the judgment of the Learned Senior Resident Magistrate sitting at Bungoma on the 30th day of November 2000. Mr Waswa advocate for the applicant argued that the proceedings were not supplied within time because the lower Court file was taken to the High Court.

On her part, Mrs. Aburili opposed the application on the ground that the reason advanced by the applicant did not merit consideration because the delay was caused by a party to the proceedings with the applicant's connivance.

The applicant did not cite the provisions relevant to the current prayer. However, I can infer that the applicant must have intended to cite section 79 G of the Civil Procedure Act. Under this section the applicant must satisfy this court that he has good and sufficient reasons why he failed to lodge the appeal within time. In this case the applicant has alleged that he was not supplied with the proceedings within time by the Lower Court. I expected the applicant to annex to his affidavit in support of the application a copy of a certificate of delay from the Lower court, a letter of request of proceedings or a letter showing that the original file had been forwarded to the High court. I even expected him to secure an affidavit from a member of staff of the Lower court to confirm that indeed the Lower court file had been forwarded to this court.

The sum total of the matter is that I am not satisfied that the applicant's application has merit. There is no evidence that he even applied for proceedings. Consequently, the summons dated 2nd May 2003 is ordered dismissed with costs to the Respondent.

Dated and delivered this 16th day of November 2005.

J. K. SERGON
JUDGE

In open Court in the absence of the parties.