

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
Misc Civ Appli 829 of 2004

EMMAH NJERI GATAGIA APPLICANT
VERSUS
GRACE NJERI WAGANJU RESPONDENT

RULING

In this application dated 28th June, 2004, brought under Order 49 Rule 5, and Sections 79 G and 3 A of the Civil Procedure Act, the Applicant seeks leave to file appeal out of time.

Judgment in the lower court was delivered on 27th March, 2003. This application was filed on 29th June, 2004, some 15 months past the due date. The Applicant's reasons for not filing the Memorandum of Appeal in time, that is within 30 days of the Judgment, are that the ruling was "vague"; that he was not given the right of appeal by the lower court, that instead the lower court gave him a "mention date"; and that the appeal is meritorious.

Section 79 G of Cap 21 under which the application is made provides 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.”

Now, the operative words, which guide the Court in the exercise of its discretion to admit an appeal out of time, are "good and sufficient cause" in the proviso to Section 79 G. So, has the applicant here demonstrated good and sufficient cause for not filing the appeal in time? Not, in my view.

None of the reasons cited for the delay here constitute "good and sufficient cause". If the Ruling was "vague" that in itself was a ground of appeal. The applicant's right to appeal arise from the statute, not from the Court. That certainly is not a good excuse for a 15 month delay.

Accordingly, and for reason outlined, I am unable to grant leave to file appeal out of time, and I dismiss the application dated 28th June, 2004 with costs to the Respondent.

Dated and delivered at Nairobi this 9th day of November, 2005.

ALNASHIR VISRAM

JUDGE