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**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CRIMINAL APPLICATION NO. 8 OF 2004**

STEPHEN MBINDA NGEMU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

**RULING**

In the application dated 25.2.2004 the applicant prays that the court do grant him leave to file appeal against the judgement of Senior Resident Magistrate Yatta in TR 474/01 out of time.

The application is supported by the affidavit of C. K. Mwihia advocate who depones that he applied for copy of proceedings soon after the judgement on 31.7.2003 as per annexure CKM I but the same were not ready till 20.2.2004 by which time, time for filing appeal had lapsed and that is why he filed this application.

The application was opposed on grounds that no sufficient reason has been given for the delay.

I do note that the proceedings of the lower court were certified on 11.8.2003. Nearly 3 weeks after the judgement was delivered.

There is no evidence that the applicant sought these proceedings after the said certification. Normally the court will issue a certificate of delay. For some reason the applicant has ignored to annex it. It is only that certificate that can show how long the delay that was occasioned by the court was. Further, the applicant has failed to annex the letter of the court forwarding the proceedings to counsel. I believe these documents were not annexed for reasons best known to applicant. That is, so that the court cannot tell when exactly the proceedings were ready and forwarded.

The affidavit by counsel regarding when he received the proceedings from the lower court is neither here nor there. He may have opted to collect them at his own convenience. The record speaks for itself.

I do agree with respondent that no sufficient reason has been given for the delay. The delay is inordinate bearing in mind that the proceedings were certified as early as 11.8.2003. The application lacks merit and it is dismissed with costs.

Dated, read and delivered at Machakos this.....day of.....,2004.

**R. WENDOH**

**JUDGE**