

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL MISCELLANEOUS APP. NO. 17 OF 2004

CATHERINE KIINGWA :::::::::::::::::::: APPLICANT

VERSUS

RHODES MASAA JANE :::::::::::::::::::: RESPONDENT

R U L I N G

The applicant acting in person brought this application under Order 49 Rule 5 Civil Procedure Rules and Section 3A Civil Procedure Act asking this court to enlarge the time for filing of an appeal against the Mwingi Resident Magistrate's Court No. 17 of 2001 and costs be in the cause. The grounds upon which the application is brought are found on the face of the application and supported by an affidavit and another further affidavit. The applicant wants to appeal against the order of the lower court dated 31.12.2003.

The application was opposed. The applicant annexed a copy of the ruling which she intends to challenge on appeal but not the rest of the proceedings. The applicant was not heard on her defence and it would be crucial for the court to look at the defence that had been filed in the lower court. Without the said defence court can not reach a fair decision. Applicant was acting in person and the court feels that it would be unfair for the court to go into the merits of the application without according her a chance to avail the proceedings of lower court which the court needs to look at. Under the circumstances the court will strike out this application as being incompetent and with costs to the respondent. The applicant is however at liberty to file another application and annex all the necessary documents for the court to consider on merit.

Orders accordingly.

Dated, read and delivered at Machakos this 5th day of May, 2004.

R. V. WENDOH

JUDGE