

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CIVIL MISC. APPL. NO.58 OF 2004

JOSIAH N. OYUGI APPLICANT/DEFENDANT

VERSUS

BETTY CHELEGATRESPONDENT

RULING

The applicant in his application dated 27th May 2004 has four prayers as follows: a). For purpose of this application only. Orders made herein to apply equally to to Kisii CM CC.NO.1363 OF 1996. b). Leave be granted to file appeals out of time for judgments of S.P.M. in Kisii CM.CC. NOS.1363 and 1366 of 1996. c). There be stay of execution of Kisii CM CC.NOS. 325 and 327 of 2004 pending the outcome of the proposed appeals. d). Costs of the application be provided for. Though the application is not very candid. Apparently there were two suits being Kisii CM CC.NO.1363 and 1366 of 1996 both against the applicant. On 21st October 1998 counsels for the parties entered a court judgment both on the decretal amount and costs.

In the year 2003 counsel for Respondents filed declaratory suits. Counsel for the applicants thereafter filed application to set aside the consent judgments. This application was dismissed on 4th March 2004. This application was filed on 2nd June 2004. Mr. Nyakeyo in his submission said that the date for delivery of the lower courts ruling was to be delivered on 16/1/04. It was not delivered on that date. They were not given Notice of the date of delivery. I think Mr. Nyakeyo was a bit confused. The application before me is not to appeal against the court's ruling of 4th March 2004 which dismissed their application. It is an application to appeal against the judgments entered on 21st October 1998. Prayer (b) of the application is very clear on that. The grounds in support of the application are also clear.

There was no explanation only it took the applicant almost 6 years to appeal. The claim that they thought that the Respondent will not execute against the judgment is not a good reason. From 1998 to 2003 they had not applied to set those judgments aside. Time did not start running on 4th March 2004 when their application was rejected but from 21st October 1998 when the judgments were entered. There is no draft memo of appeal annexed to the application. This shows that the applicants are not serious.

All in all I find application has no merit and the same is dismissed with costs.

KABURU BAUNI

JUDGE.

26/7/04

Delivered 26th July 2004 in presence of Mr. Nyamurongi.

KABURU BAUNI

JUDGE