

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI
MISC. APP. NO. 55 OF 2003

ALEXANDER MAIGWA MWANGI.....APPLICANT

VERSUS

ANNE WAMUCII MUHIHI.....RESPONDENT

R U L I N G

The applicant has come to this court under Section 79 G of the Civil Procedure Act seeking leave of this court to file his intended appeal against the judgment delivered on 20th November 2002 in Nyeri CMCC No.360 of 2001. The applicant has explained that the delay in filing the appeal was due to the delay in obtaining the proceedings and judgment from the Lower Court even though the same were applied for in time. A certified copy of the proceedings together with a certificate of delay confirming that the proceedings were applied for on 21st November 2002, but received on 17th February, 2003 has been availed.

The application is objected to on the grounds that the proceedings were not necessary for the appeal to be filed, and that there was a further delay after receipt of the proceedings which delay has not been explained, and further that the application ought to have been brought under order 49 of the Civil Procedure Rules and not Section 79 G of the Civil Procedure Act.

I have carefully considered this application and the submissions of both counsels. It is evident that the judgment subject of the intended appeal was delivered on 20th November 2002 and that the applicant applied for copies of the proceedings and judgment on 21st November 2002 but did not receive them until 17th February 2003.

Section 79 G of the Civil Procedure Act is a substantive Provision dealing with time for filing appeals from subordinate court. Order 49 of the Civil Procedure Rules is intended to add on to the Substantive Provisions of the Civil Procedure Act. It is not intended to derogate from the provisions of the Act nor is it intended to replace the provisions of the Act. This application was therefore properly brought under Section 79 G of the Civil Procedure Act which provides for a period of thirty days for filing an appeal from a Subordinate Court:-

*“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 the copy of the decree or
order.”*

The certificate herein related to the period required for the preparation of the proceedings and judgment. I am satisfied that these were necessary to enable the applicant file his appeal. There has therefore been no inordinate delay as the total period taken by the applicant excluding the period taken to prepare and provide the proceedings was within thirty days.

I do therefore allow this application and grant leave to the applicant to file his appeal within fifteen days from the date hereof.

Costs of this application shall be costs in the appeal. Orders accordingly.

Dated, Signed and Delivered this 22 nd day of December 2003.

H. M. OKWENGU

JUDGE