

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. CIVIL CASE NO.2 OF 2002

MIGOTIYO PLANTATIONS.....PLAINTIFF

VERSUS

JOHN NGESA AGALA.....DEFENDANT

R U L I N G

This application is for extension of time to file appeal out of time. It is based on the grounds that the delay was due to the unavailability of typed proceedings and judgment. The Judgment was entered on June 28, 1999 and this application was filed on January 9, 2002.

Section 79G of the Civil Procedure Act is clear; an appeal from a subordinate court to the High Court must be filed within thirty days from the date of decree, excluding such period which the lower court certifies as being requisite for the preparation and delivery to the appellant of a copy of the decree or order.

There is absolutely no need for proceedings in order to lodge an appeal. Order XLI Rule 1 is even more specific. Only a Memorandum of Appeal is required. Under Rule 1A where no certified copy of the decree or order appealed against is filed with the Memorandum, the appellant shall file such certified copy as soon as possible.

The power to extend time is a discretionary one which may be exercised on the following guiding principles. The court must consider the length of the delay, reason for such delay and the prejudice it may occasion the other party should such order be granted.

In the circumstances, I am of the view that the applicant has not shown this court sufficient reason for delay in filing his intended appeal in time. In any event, the Applicant has not proved to this court when proceedings were ready.

I, therefore, dismiss the application dated January 9, 2002 with costs.

Dated and Delivered at Nakuru this 22nd day of April, 2002.

ALNASHIR VISRAM

JUDGE