



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MACHAKOS  
CIVIL MISCELLANEOUS APPLICATION NO. 234 OF 2000**

**UNITED INSURANCE COMPANY LTD. :::::::::::::::::::: APPLICANT**

**VERSUS**

**BERNARD SYENDO MUNYASYA :::::::::::::::::::: RESPONDENT**

Coram: J. W. Mwera

Nganga Advocate for Applicant  
Sila Advocate for Respondent  
C.C. Muli

\*\*\*\*\*

**RULING**

The applicant, the defendant in the lower court at Kangundo Senior Principal Magistrate's court filed this application dated 10.5.2000 under O 50 r.1, O 41 r. 4 Civil Procedure Rules and SS. 3A, 79 G Civil Procedure Act for order that time be enlarged in its favour to file its appeal out of time. It also prayed that the decree in the lower court case SRMCC 469/99 be stayed and then the draft memorandum of appeal annexed to this application be deemed filed and served. Mr. Ngang'a told the court that their intended appeal had probable chances of success (it was arguable?) and that the applicant will suffer substantial loss if a stay was not granted whereby it has to pay out Sh.178,870/=. It was not demonstrated how this would be a substantial loss to pay to the Respondent or for any other reason but that the applicant would provide security as ordered by the court when it grants the stay. Mr. Ng'ang'a further told the court that this court had unfettered discretion under S. 79G Civil Procedure Act to enlarge time and that failure to appeal in time was unpremeditated, unintended and excusable.

From the affidavit in support of this application and what Mr. Ngang'a plus Mr. Sila said, there was a declaratory suit at Kangundo. The applicant entered appearance and filed a defence. Seeming the defence was struck out or something and judgement was entered on 30.9.99. Time to appeal began to run for 30 days i.e. up to 30.10.99. No 10 appeal was lodged and nothing also took place until 4.2.2000 when instructions to appeal issued. Again nothing happened until 10.5.2000 when this application to enlarge time was lodged here. For about 8 months' lapse, Mr. Sila argued, no explanation was given to the court to satisfy it that the enlargement of time is deserved. Mr. Ngang'a answered that there was a mix up in the filing system of his client – hence this rather too long a delay.

To be honest, rather too scanty and less than satisfactory cause is given as to why there was this 8-months delay in filing the appeal. What is this mix up in the filing system? Anyway may the applicant have its day in court much as Mr. Ngang'a did little to demonstrate that their appeal was arguable. It is thus ordered that the memorandum of appeal herein be deemed filed and served subject to payment of fees. A complete and proper record of appeal to be prepared and filed for consideration in the next 21 days from the date hereof. The applicant to deposit the total decretal sum in a joint interest earning account of both lawyers within 30 days, and to pay the Respondent's costs assessed at Sh.3000/= before the next listing. In default of any of these conditions will mean that leave to appeal out of time was never granted and the respondent will pursue any course he deems fit.

Orders accordingly.

Delivered on 18th January 2001.

**J. W. MWERA**

**JUDGE**