

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

H.C. MISC. CIVIL APP. NO. 581 OF 2000

PENINA MWIKALI MAKULA.....APPLICANT

- V E R S U S -

JANE MUTHONI MBAKA.....RESPONDENT

R U L I N G

This is an application for leave to appeal against the judgment and decree of a subordinate court out of time.

The Applicant who was the Defendant in the main suit only stated that being dissatisfied with the judgment in the subordinate court she instructed her lawyers to request for certified copies of the proceedings, judgment and decree for purposes of the appeal and that when she collected the same, she had already run out of time. This is not sufficient matter to satisfy this court to allow this application. The matter of leave to file an appeal out of time is dealt with in section 79G of the Civil Procedure Act. That section provides as follow:-

“79G. Every appeal from a subordinate court to the High court shall be filed within a period of thirty days from the date of the decree or order appealed against, 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 a copy of the decree or order: Provided that an appeal may be admitted out of time i f the Appellant satisfies the court that he had good and sufficient Cause for not filing the appeal in time.”

For the matter deponed to by the Applicant, nothing would have been easier than for her to file a certificate of delay from the subordinate court to show that the delay was occasioned by the subordinate court preparing and delivering to her “a copy of the decree or order.” Otherwise, the Applicant does not offer any other reason why she did not file her appeal out of time and without such explanation she cannot benefit from this court’s discretion in this matter.

DATED and DELIVERED at NAIROBI this 2nd day of April, 2001.

ALNASHIR VISRAM,

J U D G E.