



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT MIGORI**  
**MISC. CIVIL APPL. NO. 2 OF 2015**

**BETWEEN**

EUNICE AUMA ONYANGO ..... APPLICANT

AND

SALIN AKINYI OLUOCH .....RESPONDENT

**RULING**

The Notice of Motion dated 5<sup>th</sup> January 2015 seeks leave to file a memorandum of appeal from the judgment and decree delivered in Rongo **SRMCC No. 26 of 2014** on 14<sup>th</sup> November 2014. The application is supported by the applicant’s deposition in which she states that, “*I was consolidating my records, some of which took long to retrieve, for purpose of filing the appeal.*” Under **section 79G** of the **Civil Procedure Act**, the applicant is supposed to furnish “*good and sufficient cause*” for failing to file the memorandum of appeal within 30 days of the judgment.

It is not necessary to obtain the record of appeal to order to lodge the memorandum of appeal as **section 79G** of the **Act** provides for an opportunity to lodge a record of appeal at a later date. However, given the short time between the delivery of judgment and the time the application was filed, I am inclined to exercise my discretion in the applicant’s favour. Any prejudice to the respondent can be compensated by an award of costs.

The memorandum of appeal shall be filed within 7 days from the date hereof. The applicant shall pay the respondent Kshs. 10,000/- costs within 7 days otherwise the appeal shall be deemed dismissed.

**DATED and DELIVERED at MIGORI this 5<sup>th</sup> day of March 2015.**

**D.S. MAJANJA**

**JUDGE**

Mr Onyango instructed by Nyauke & Company Advocates for the applicant.

Respondent in person.