

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

MISC APPLICATION NO 1118 OF 2003

(APPLICATION FOR LEAVE TO APPEAL OUT OF TIME)

JOHN MUNGAI THUKUAPPLICANT

V E R S U S

HUMPHREY MUIRU THUKU

MUIRU THUKU MUIRU.....RESPONDENT

R U L I N G

1. This is an application under **section 79G** of the **Civil Procedure Act, Cap 21** (the **Act**) for leave to appeal out of time against the decree in **Kiambu CMCC No. 94 of 2012**. The Applicant was the defendant in that suit while the Respondents were the plaintiffs. Judgment was delivered on 9th May 2014. By that judgment the plaintiffs were permitted to enforce specific performance of a contract for sale of land.
2. It is the Applicant's case in this application that judgment was delivered without notice to any party and that he learnt about it on 15th October 2013. The present application was filed about a month later on 22nd November 2013.
3. The application appears to have been duly served upon the Respondents (see affidavit of service by one William Kung'u Mundia filed on 18th February 2014). The copy of the application served had the hearing date (18th February 2014) endorsed thereon. No papers in response to the application were filed.
4. Under the **proviso** to section 79G aforesaid the Court has the power to admit an appeal out of time if the appellants satisfy the court that he had good and sufficient cause for not filing the appeal in time.
5. In the present case I am satisfied that the delay in the delivery of judgment and subsequent delivery of the same without notice to the parties constitutes good and sufficient cause for the Applicant not filing the appeal in time. At any rate the application is unopposed despite service upon the Respondents.
6. In the circumstances I will allow the application and grant the leave sought. The Applicant shall file his memorandum of appeal within 14 days of delivery of this ruling. Costs of the application shall be in the appeal. If ultimately no appeal is filed, there will be no orders as to costs of the application. Those will be the orders of the court.

DATED AND SIGNED AT NAIROBI THIS 11th DAY OF MARCH 2014

H.P.G. WAWERU

JUDGE

DELIVERED THIS 17TH DAY OF MARCH 2014