

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

MISC APPLICATION NO 463 OF 2014

KAPA OIL REFINERIS LTDAPPLICANT

VERSUS

**1. JAMES ODOUR OWISO
2. GERAL IRUNGU MWANGI.....RESPONDENTS**

RULING

1. In this application by **notice of motion dated 20th May 2014** the Applicant seeks the main order that he be granted leave to appeal out of time against a money decree of the lower court passed on 27th August 2013. None of the grounds for the application appearing on the face thereof address the issue of delay in filing appeal of over nine (9) months. It is deponed in the supporting affidavit sworn by one **Simita Shah**, the Administration Manager of the Applicant, that the delay in filing the application is not inordinate without more.

2. The Respondents have opposed the application by **grounds of opposition filed on 09/06/2014** and also by a **replying affidavit filed earlier on 27th May 2014**. The affidavit is sworn by the Respondents' advocate, one **Nicholas Sumba**. The only relevant ground of opposition emerging from both documents is that there has been inordinate delay on the part of the Applicant.

3. I have considered the submissions of the learned counsels appearing. **Section 79G of the Civil Procedure Act, Cap 21** (the Act) provides -

“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 if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

4. An applicant for leave to appeal out of time must demonstrate to the court's satisfaction **good and sufficient cause** for not filing his appeal within the time stipulated by the law. The Appellant has not even attempted to do that in its supporting affidavit. A statement from the bar by its advocate at the hearing of the application to the effect that a similar application had been misguidedly filed before the lower court is not such good and sufficient cause as ignorance of the law is no excuse.

5. In the event I find no merit in the Applicant's application. The same is dismissed with costs to the Respondent. The interim stay of execution now in place is hereby set aside. Those will be the orders of the court.

DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF OCTOBER 2014

H P G WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 10TH DAY OF OCTOBER 2014