



**IN THE HIGH COURT OF KENYA AT MURANG'A**

**MISC CIVIL APPLICATION NO 47 OF 2014**

**1. ABDULLAHI SAID**

**2. SAID ABDI..... APPLICANTS**

**VERSUS**

**BONIFACE NDUNGU KAMAU.....RESPONDENT**

**RULING**

1. This is an application under **section 79G** of the **Civil Procedure Act, Cap 21**. It seeks leave to appeal out of time against the decree of the lower court passed on 25<sup>th</sup> May 2013. By that decree the Respondent was awarded general and special damages amounting to KShs 591,119/00.

2. Under the aforesaid section 79G the Applicants had 30 days from the date of delivery of the judgment within which to appeal. In computing the 30 days, any time which the lower court may have certified as having been necessary for the preparation and delivery to the appellant of a copy of the decree or order appealed against, would be excluded. There is no such certificate exhibited. The Applicants thus had until 22<sup>nd</sup> June 2014 to file their appeal. They filed their present application on 30<sup>th</sup> June 2014. That means they were late by eight (8) days only. Their explanation for that delay is that they were waiting for instructions from the Applicants' insurers.

3. The Respondent has opposed the application by **replying affidavit filed on 24<sup>th</sup> September 2014** which is sworn by his advocate, **Lucy K Waweru**. The grounds of opposition emerging therefrom are that no sufficient reason for the delay has been given, and that the application is calculated only to delay the Respondent from realizing the fruits of his judgment.

4. At the hearing of the application there was no appearance for the Respondent, despite the hearing date having been taken by his advocate. Learned counsel for the Applicants submitted along the lines already outlined. I have considered his submissions.

5. Under the **proviso** to section 79G of Cap 21, an appeal may be admitted out of time if the appellant satisfies the court that he has good and sufficient cause for not filing the appeal on time.

6. In the present case the Applicants have an undoubted right of appeal. They were late by only eight days. It cannot be said that the delay is inordinate. It is not unreasonable that the delay was caused while the Applicants' advocates sought instructions from the Applicants' insurers. I am thus satisfied that there was good and sufficient cause for not filing their appeal in time.

7. In the event I will allow prayer (3) of the application and grant the leave sought. The Applicants shall file their memorandum of appeal within fourteen days of delivery of this ruling. Costs of the application shall be in such appeal if filed. It's so ordered.

**DATED SIGNED AND DELIVERED AT MURANG'A THIS 5TH DAY OF DECEMBER 2014**

**H P G WAWERU**

**JUDGE**