



REPUBLIC OF KENYA

High Court at Nyeri

Civil Miscellaneous Application 97 of 2012

UMOJA SERVICES STATION LTD.....APPLICANT

Versus

EVANS MOCHUMBE GWARO RESPONDENT

RULING

1. By a Notice of Motion dated 3rd July 2012 the applicant moved the court under section 79(G) of Civil Procedure Act order 51 and order 50 Rule 6 of the Civil Procedure rules for order that this Honourable court be pleased to extend time within which to file the appeal out of time.

2. It is supported by the affidavit of John Ndungu Njogu where the same deponed that judgment was delivered on 5th November 2010 and the applicant being dissatisfied with the judgment applied for proceedings and judgment on 10th November 2010.

3. The said proceedings were not supplied until 15th June 2012 and certificate of delay therein issued on 21st June 2012.

4. That the applicant was granted stay of execution pending hearing and determination of appeal on 2nd February 2011 and since time for filing an appeal has elapsed it is only just to grant the orders sought.

5. Section 79(G) of Civil Procedure Act provides as follows:

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 a copy of the decree and 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.

6. I have noted that the certificate of delay herein was issued on 21st June 2012 and the application herein filed on 3rd July 2012.

7. In the case of LEO SILA MUTISO v ROSE HELLEN WANGARI MWANGI civil application No. NAI 251 of 1997 quoted in NYERI CIVIL APPEAL NO. 135/2010 the court had this to say:

“It is now settled that decision whether or not to extend time for appealing is essentially

discretionary. It is also well settled that in general the matter which this court take into account in deciding whether to grant the extension of time are first the length of delay secondly the reason for the delay thirdly the chances of the appeal succeeding if granted and fourthly the degree of prejudice to the respondent if the application is granted.”

8. I am therefore of the view that the reason for the delay has been sufficiently explained and that the intended appeal is arguable.

9. There is no prejudice the intended respondent will suffer should the orders sought be granted noting that stay had been granted in the first appealed from.

10. I therefore allow the application herein and extend time within which to file the appeal herein and direct that the same be filed and served within the next 14 days from the date herein with no order as to cost.

Dated and delivered at Nyeri this 9th day of May 2013.

J. WAKIAGA

JUDGE

Mr. Ombongi for Mr. Gori for the Respondent

N/A by Mr. Wachira for the appellant

Court: Ruling read in open court in the presence of the above.

J. WAKIAGA

JUDGE