

REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Miscellaneous Civil Application 224 of 2012

ANDREW MWANGI CHUI..... APPLICANT

VERSUS

GREGORY OTING'A KOLI..... RESPONDENT

(Being an application for leave to file Memorandum of Appeal in respect of an intended appeal out of time from a judgment of the lower court at Nairobi (Hon. Winfrida B. Mokaya (SPM) delivered on the 7th day of September 2011 in Civil Case No.8652 of 2005 (Milimani))

RULING

Notice of Motion dated 17/4/2012 is brought under Order 38 rule 2 Order 42 rule 6 Order 50 rule 5 Section 79 G, 1A, 1B, 3A of Civil Procedure Act Orders sought (1) time to file Memorandum of Appeal be extended (2) stay of proceedings in CMCC No.8652 of 2005 Milimani be granted application based on grounds stated in the affidavit of Andrew Mwangi Chui the applicant. It is show that he is aggrieved by decision of the lower court delivered on 7/9/2011 and has instructed advocate to file appeal.

The advocate stated that according to record judgment was deferred several times on 4/5/2011, 26/5/2011, 8/6/2011 and on notice and that the judgment was eventually delivered on 7/9/2011 yet no notice had been served on the advocates. Therefore the applicant was not able to file appeal in good time. On 8th November 2011 a letter was sent requesting for certified proceedings and judgment which is exhibit AMC 1 (a) and (b). It was 2 months delay by the time the advocates came to know of delivery of judgment. The proceedings and judgment has not been provided up to date. The delay of filing appeal is beyond his and advocate's control.

The appeal has arguable and high chances of success. The applicant gives undertaking for the due performance of the decree if the appeal is not successful.

Upon perusing the application and upon hearing submission of counsel I am satisfied that the delay in filing appeal within time is well explained and that it is not due to the fault of the applicant or his advocate. It is not for this court to consider the merits of the appeal but upon perusing the documents attached to the affidavit, it is clear the applicant has an arguable appeal which is not frivolous.

I therefore extend the time as prayed for a period of 30 days from today.

Costs of application shall be in the cause.

Dated and delivered this 3rd day of July, 2012.

J.N. KHAMINWA
JUDGE