

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

MISCELLANEOUS CIVIL APPLICATION 126 OF 2008

S.M. GICHOKI.....PLAINTIFF/APPLICANT

VERSUS

ERASMUS S. MUNYI.....DEFENDANT/RESPONDENT

RULING

The applicant has moved this court vide his application dated 24/11/2008 for an order for extension of time within which to file an appeal against the Judgment of *P.T. Nditika dated 15/5/2005*. It is premised on the 3 grounds on its face and supported by the affidavit of the applicant dated 24/11/2008. The respondent has opposed the application vide the replying affidavit dated 24/11/2008. I have considered the applicant, the said grounds and the rival affidavits. In my considered view, the delay involved was not inordinate. The court record does not show if the applicant was present in court when the Judgment was deferred on 26/3/2008 and on 4/4/2008. He should not therefore be restrained from pursuing his appeal. It is also noted that the Defendant/Respondent will not suffer any prejudice at all because the fact that an appeal has been filed does not on its own stop the taxation of the bill etc.

I therefore exercise my discretion in favour of the applicant and allow the application with costs in the cause. The intended appeal be filed within 14 days from the date of this ruling.

W. KARANJA

JUDGE

2/6/2009

Delivered today in open court in presence of Mr. Maina for M. Magee for the applicant.

W. KARANJA

JUDGE

2/6/2009