REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT ELDORET

Misc Civil Appli 100 of 1995

SAMWEL MWAURA……..……..APPELANT

vs

AGNES NANJALA.....RESPONDENT

RULING

The applicant seeks leave to file appeal out of time.

The grounds in support are set out in the annexed affidavit and oral submissions in court and these are that the applicant has an arguable appeal. The filing of the name was delayed as they did not get proceedings in time, they were instructed to appeal immediately judgment was delivered and. they applied for proceedings immediately but there was delay in supplying the same.

The respondent has opposed the application on the grounds of opposition filed, grounds in affidavit in support and further affidavit and oral submissions in court and these are that judgment was delivered in January, 1995 and applicant took 38 days to apply for proceedings by which time the time for appeal had elapsed, and after they were typed and ready for collection certificate of delay was refused as time for appeal had elapsed as at the time the request for proceedings was made.

3. That even after getting proceedings the application forleave was not filed until a year later

4. That the decree has already been executed,

In reply counsel for applicant stated that as soon as they received proceedings of the lower court they sent the papers to an advocate in Eldoret with instructions to file and prosecute the same on their behalf but he delayed in filing the same forcing applicants counsel to retrieve and file the same upon hearing both parties on this application. I find that indeed the counsel for applicant had instructions to appeal immediately but took 3 months to get proceedings and then instead of filing paper's themselves they send them to a colleague in Eldoret who delayed the matter further, I find that the delay was caused by counsel and there is no need to punish the appellant by refusing him the right to appeal. I have perused the intended memo of appeal and find that the same raises serious legal argument.

The applicant is given 14 days within which to file appeal from the date of reading of this ruling. The respondent will have costs of the application.

Dated at Eldoret this 15th day of August, 1996.

R, Nambuye

JUDGE

Read and delivered at KitaLe this 30th day of September 1996.

R. Nambuye

JUDGE