



**REPUBLIC OF KENYA**  
**ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**CIVIL APPEAL NO. 13 OF 2013**

**JOSEPHAT MURIITHI MIGWI.....APPLICANT**

**=VERSUS=**

**HILLARY MUTHIE MUREITHI.....RESPONDENT**

**R U L I N G**

**Introduction**

1. Before me is the Applicant's Application dated 29<sup>th</sup> October 2013 filed pursuant to the provisions of Sections 95 and 3A of the Civil Procedure Act and Order 50 Rule 6 of the Civil Procedure Rules. The Application is seeking for the following reliefs:
  - (a) **THAT this Honourable Court be pleased to grant the Appellant/Applicant leave to file an appeal out of time.**
  - (b) **THAT the period of 30 days within which a Civil Appeal ought to be filed has since elapsed after the judgment of LAMU SRMCC NO.25 of 2010 was delivered on the 10<sup>th</sup> January 2013.**
  - (c) **THAT upon granting the Applicant leave to file his appeal out of time, the Memorandum of Appeal attached herein be deemed to be proper and duly filed upon payment of the requisite court fees.**
2. The Application is premised on the grounds that the delay to file the appeal was occasioned by the delay in typing of the proceedings and Judgment; that although the proceedings were applied for on 12<sup>th</sup> January 2013, the same were not typed until 30<sup>th</sup> September 2013 and that the delay was not intentional.
3. The Respondent filed an affidavit and stated that the Judgment in the lower court was delivered in the presence of the Applicant and the current Application should be dismissed.
4. Section 79 G of the Civil Procedure Act provides that every appeal from a subordinate court to the High Court should be filed within a period of 30 days from the date of the decree **“excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery of the Appellant of a copy of the decree or order”**.
5. The same section provides 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. The Appellant has annexed on the Supporting Affidavit the Certificate of Delay issued in SRMCC No. 25 of 2010, Lamu dated 30<sup>th</sup> September 2013 which shows that the Applicant applied for certified copies of the proceedings and Judgment on 12<sup>th</sup> January, 2013 which were ready on 5<sup>th</sup> August, 2013.
  7. The filing of the Memorandum of Appeal does not require copies of the proceedings. The only period that is exempted from computation of time is the period from when the Judgment was delivered to when the decree was issued. Other than that period, a party must file his Memorandum of Appeal within 30 days from the date of the decree. The Applicant has not stated whether he applied for a decree after the delivery of the Judgment. In any case, and for the purpose of the appeal, the Civil Procedure Act at section 2 has defined “a decree” to include “a judgment.” As I have stated above, the Judgment in this matter was delivered on 10<sup>th</sup> January, 2013 in the presence of the Plaintiff. That is when time started running for the purposes of filing an Appeal.
  8. The delay in typing proceedings cannot on its own be sufficient reason as to why an appeal was not filed within 30 days. The proceedings are only important during the filing of the Record of Appeal and not the Memorandum of Appeal.
  9. In any event, the Applicant's own Certificate of Delay shows that the proceedings were ready for collection in SRMCC No. 25 of 2010 on 5<sup>th</sup> August 2013. However the Applicant did not file the current Application immediately thereafter. The Applicant has not given any reason for the delay in either filing the appeal within thirty (30) days from the date when the decree/judgment was issued to him or even from the date when the proceedings were ready. However, as I have already stated above, a party is not supposed to wait for the typed proceedings to file an appeal.
  10. For the reasons I have given above, I dismiss the Applicant's Application dated 19<sup>th</sup> October 2013 with costs.

Dated and delivered in Malindi this 28<sup>th</sup> Day of **March, 2014**

**O. A. Angote**

**Judge**