



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAIROBI

Civil Appli 48 of 2009

JAMES KAMAU GACHAU.....APPLICANT

AND

DORCAS WAIRIMU KAMAU.....RESPONDENT

*(An application for extension of time to file record of appeal out of time from the ruling
and order of the High Court of Kenya at Nairobi (Khamoni, J) dated 7th June, 2007*

in

H. C. C. A. No. 271 of 2006)

RULING

This is an application (presumably under Rule 4 of the Court of Appeal Rules) for extension of time to file an appeal from the ruling and order of the superior court (Khamoni, J.) dated 2nd June, 2007. The application is supported by an affidavit sworn by the applicant, James Kamau Gachau, on 12th February, 2009 at Thika.

The applicant is unrepresented, and that perhaps explains the reason why he has not identified the Rule under which this application is brought. His main reason for this two year delay is that he was unaware that there was a time limit within which to file the memorandum and record of appeal. He says he is a lay person, and is not aware of the legal procedure. Clearly, he was “aware” of the time limit within which to file the Notice of Appeal, as indeed that was filed on time!

The delay here is inordinate, and the reason for delay completely lame and unacceptable. Ignorance of the law is not a defence. Rule 4 of the Rules of this Court gives me unfettered discretion whether to extend time or not. However, that discretion has to be exercised judiciously, and in accordance with the principles set out in ***Leo Sila Mutiso vs Rose Hellen Wangari Mwangi – Civil Application No. Nai 251 of 1997*** where this Court stated:

“It is now settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are first the length of the delay. Secondly, the reason

for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly the degree of prejudice to the respondent if the application is granted”.

Having taken into account all the factors indicated above, I am of the view that this application has no merit, and the same is disallowed. No order as to costs.

Dated and delivered at Nairobi this 12th day of June, 2009.

ALNASHIR VISRAM

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR