



IN THE COURT OF APPEAL OF KENYA

AT NYERI

Civil Appli. Nai 246 of 2006 (NYR. 14/2006)

FRANCIS MWAI KARANI APPLICANT

AND

ROBERT MWAI KARANI RESPONDENT

(An Application for enlargement of time to appeal from a judgment

of the High Court of Kenya At Embu (Khaminwa, J) dated 28th June, 2006

In

H.C. Succession Cause No. 221 of 2004)

RULING

I must make it abundantly clear at the outset that lack of money or impecuniosity on the part of an applicant cannot and has never been accepted as a valid reason for extending time to lodge an appeal. But as has always been said, each case must be looked at on its own facts and that is exactly what I am doing in this application. In other words, I am not establishing any new principle different from the well known one that lack of financial resources is generally not a basis for extending time.

What are the circumstances herein? The judgment the applicant proposes to appeal against was delivered on 28th June, 2006 and on 30th June, 2006, the applicant lodged his notice of appeal. From what he tells me, he was supposed to lodge his record of appeal by 30th August, 2006; he did not do so but he did not just sit idly by. On 31st August, 2006, he lodged the present motion for extension of time and in his supporting affidavit dated 29th August, 2006 which accompanied the notice of motion, the applicant swore as follows:-

“5. THAT time to file the appeal will elapse on 30th day of August, 2006 and I have not been able to raise the filing fee for the appeal.

6. THAT I humbly request this Honourable Court to enlarge time to enable me file my appeal, which has high chances of success.

7. -----

8. THAT it is not my wish to be late in filing my appeal but because of financial constraints since I have

children in school who need fees.

Clearly the applicant was aware of the requirements for appealing and he complied with virtually all of them except the important one of lodging the appeal. One day after the time had lapsed he moved to court asking for extension. These are the peculiar circumstances of this particular motion and taking everything into account, including Miss Wairimu's contention that the applicant has no chance of succeeding in his intended appeal, I still think I should exercise my discretion in the applicants favour. By and large, the applicant has exhibited remarkable vigilance and I think I should extend the time for him. I do so and order that the record of appeal must be lodged within seven (7) days of the date hereof and thereafter served upon the respondent within another seven (7) days from the date of its lodgment in Court. If the applicant should fail to comply with any of these conditions then in the event of such failure, the motion shall stand dismissed with costs without further order of the Court. The costs of the motion shall be in the appeal.

Dated at Nyeri this 11th day of May, 2007.

R.S.C. OMOLO

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.