

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NYERI

CORAM: GICHERU, C.J. (IN CHAMBERS)
Civil Application Nai 301 of 2004 (NYR.22/2004)

BETWEEN

JOHN MURIGI NGARIAPPLICANT
AND
1. KABUCHU RWARIO KANJA
2. MWENJA MUNYIRI MIGWI.....RESPONDENTS

*(Application for extension of time to file an appeal from a judgment of the
High Court of Kenya at Nyeri (Khamoni, J) dated 23.10.03*

in
H.C.C.A. NO. 57 OF 1998)

R U L I N G

In this application, the applicant seeks extension of time within which to lodge his notice of appeal so that the notice of appeal dated 30th October, 2003 and lodged on 7th November, 2003 be deemed to have been lodged within the extended time. It would appear to me that there was a delay of one day in lodging the notice of appeal in respect of which extension is being sought. However, it took the applicant over 11 months to make the present application citing financial constraints as the reason for the delay.

Counsel for the respondents in opposing the applicant's application refuted this claim as the applicant was a teacher by profession and according to the respondents' replying affidavit, the cost of filing a notice of appeal is less than Kshs.500/=.

The applicant's intended appeal in respect of which extension of time for lodging the notice of appeal is being sought is a second appeal and although counsel for the applicant in reply said, without more, that notwithstanding the delay referred to above the applicant had a good appeal, I think that the reasons given for the delay in making this application are porous and smacks of lack of seriousness in the pursuit of his intended appeal. I would in the circumstances decline to grant his application for extension of time within which to lodge his notice of appeal with the result that the same is dismissed with costs to the respondents. It is so ordered.

DATED and DELIVERED at NYERI this 19th day of May, 2005.

J.E. GICHERU

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CHIEF JUSTICE

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

DEPUTY REGISTRAR