



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

Civil Application Nai 225 of 2005

JOHN MURIMI NGARI APPLICANT

AND

KABUCHU RWARIO KANJA

MWENJA MUNYIRI MIGWI RESPONDENTS

**(Application for extension of time to file a Reference from a judgment of the High Court of Kenya
at Nyeri (Khamoni J) dated 23rd October, 2003**

in

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

RULING

The applicant moves the Court under **Rule 4** of the Rules of this Court for extension of time within which to write a letter to the Registrar for a reference from a decision of a learned single Judge of this Court delivered on 19th May, 2005.

The applicant depones in the affidavit in support of the application that though he instructed counsel to lodge a reference, counsel failed to do so within the prescribed time. However, it is not clear from the affidavit when counsel was instructed. This has not been revealed to me.

The delay involved herein is about eight days and has not been explained to my satisfaction. In a reference, such a delay, is inordinate since the Rules of this Court have specified a very limited period within which to file it.

The applicant is pursuing a second appeal before this Court. What he would have wanted to prosecute is a dispute of a frivolous nature as shown by the judgment of the superior court.

The applicant, in my view, has not shown that there is merit in the intended reference. Moreover, the extension of time sought, if granted will prolong a frivolous and vexatious dispute and cause undue prejudice to the respondent. Again, the delay involved in lodging this application is inordinate in the

circumstances.

The applicant insists that the delay in lodging the Notice of Appeal is **one day**. This is not so since the learned single Judge found it to be eleven months. The applicant is, in this sense, not being candid. I refuse to exercise my discretion in his favour.

In the result this application is hereby dismissed with costs which I assess at Shs.3,000/= which shall be paid within 7 days hereof.

Dated and delivered at Nyeri this 3rd day of November, 2005.

P. K. TUNOI

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JUDGE OF APPEAL

I certify that this a true copy of the original.

DEPUTY REGISTRAR