



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

MISC. APPLICATION NO. 248 OF 2001

UBA KASSIM NASSOR APPLICANT

VERSUS

SULEIMAN ELIANGI RINGA RESPONDENT

RULING

The applicant has come to this court under Section 79 (a) of the Civil Procedure Act seeking for leave to appeal out of time. She wishes to appeal against orders made by the Mombasa Kadhi Civil Case No. 120 of 1998 on 28.8.2001 with which she was not satisfied. She failed to file her appeal in time, according to her supporting affidavit, because she applied for proceedings and judgment on the same day the judgment was read but she did not receive same until 27.9.2001. She immediately wanted to file her appeal but she was out of the statutory period to do so and was advised to file this application. She argued that it was not her fault that she was late to file the appeal.

She also argued that she has good grounds of appeal and that her appeal is likely to succeed. She attached the Memorandum of Appeal showing the grounds of appeal. The order to be appeal from touches on failure to remit maintenance money or varying the existing order by reducing the sums payable to the applicant for the welfare of the children.

The application is opposed by the Respondent who states that the applicant should have filed her appeal in time and that in any case her chance of succeeding in the appeal are remote.

I have considered the grounds upon which the application is brought. The fault that led to the applicant failing to file her appeal in time was not of her own making. The delay was that of the court, which delayed in providing her with the necessary copies of proceedings and judgment, required to enable her to file the appeal. When she finally received the proceedings, she filed this application within 14 days. No clear explanation why she waited for the said 14 days. However, considering that she was unrepresented by counsel and taking into account the fact she had to depend on advise from those who know what should be done to file such an appeal this court is of the opinion that she has so far acted expeditiously and that she should therefore be granted the leave she seeks to file the appeal.

ORDER

The application is allowed. Leave to appeal out of the prescribed period is granted. Applicant to file her appeal within 14 days. Costs of this application will abide the result of the intended appeal.

Dated and Delivered at Mombasa this 19th day of December, 2001.

D. A. ONYANCHA

JUDGE



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