



**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISC. CIVIL APPL. NO.114 OF 2010**

PETER MWANGI THUMBI.....APPLICANT

~VRS~

TEACHERS SERVICE COMMISSION.....RESPONDENT

RULING

This is an application dated 17/7/2010 brought under section 3A, 63 (e) and 79 (a) of the Civil Procedure Rules. It seeks for extension of time to appeal against the judgment of Bungoma CMCC No.270 of 2008.

The grounds supporting the application are that the appeal has high chances of success and that the delay in filing the appeal was not deliberate. The Applicant depones that he learnt of the judgment on 8/3/2010 which was delivered on the 04/04/2010 on 08/03/2010. He then traveled to his advocate's office on 12/04/2010 to give them instructions to appeal. The advocate applied to court for proceedings on 13/04/2010 which proceedings were ready for collection on 05/07/2010. The application was filed on 05/08/2010.

The Respondent opposed the application arguing that the same is designed to deny the Plaintiff the fruits of his judgment. The Applicant is guilty of delay in filing his appeal and also this application. The Respondent argued that no notice of appeal was served on him meaning that the application is an after thought.

Annexed to the application is the judgment in CMCC No.270 of 2008 which was delivered on 04/03/2010. The letter applying for proceedings in this case is annexed and is dated 22/03/2010. A receipt paying for proceedings is dated 13/04/2010. Annexed also is the letter written to the Applicant by his counsel notifying him of the judgment dated 08/03/2010.

The Applicant was therefore notified of the judgment in writing four days after delivery. The letter which was posted may have taken two or three days to reach him at Webuye. On 12/04/2010, the Applicant went to his lawyer's office and gave instructions to appeal. The counsel applied for proceedings to enable him file the appeal the following day. Up to that stage, the actions of the Applicant and his counsel were very prompt. However, the time of 30 days allowed for appeal expired on 04/05/2010. From the facts analyzed above, there was no inordinate delay that can be attributed to the Applicant. Proceedings took time to be prepared in court about three (3) months. They were ready for collection on 05/07/2010. The application was filed on 15/08/2010 though it is dated 17/07/2010. There is a difference of about a month which is not explained herein by the counsel for the Applicant. The failure to file the notice of appeal was not explained. This would have been done as soon as the instructions to appeal were given by the counsel. For these two things, the Applicant ought to be condemned to pay costs. It is not a sufficient reason enough to deny the Applicant his right to appeal.

I have perused the judgment but in the absence of the memorandum of appeal, I can only say the appeal is arguable.

I find the application meritorious and allow it as prayed. The appeal to be filed and served within 14 days. As earlier explained the Applicant will meet the costs of his application.

F. N. MUCHEMI
JUDGE

Ruling dated and delivered at Bungoma on the 1st day of December, 2010 in the presence of Mr. Onyando for Ocharo for the Applicant and the Applicant too.

F. N. MUCHEMI
JUDGE



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