



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)  
Misc Appli 709 of 2002**

**KIKUYU TOWNSHIP JUA KALI ARTISANS .....  
APPLICANTS**

**VERSUS**

**DANIEL N. NG'ANG'A**

**RAHAB WANJIKU**

**JOSEPH N. MOMANYI**

**MESSR G D & BROTHERS .....  
RESPONDENTS**

**RULING**

This is an application for leave to file appeal out of time. Judgment was delivered on 1<sup>st</sup> April, 1998 and the main reasons cited for not filing the Memorandum of Appeal in time are that the lower court's file had gone missing soon after Judgment was delivered and that the applicants were awaiting lower court's proceedings.

Section 79 G of the Civil Procedure Act Cap 21, states:

***Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period of time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or orders:***

***Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time."***

The Applicants did not require copies of proceedings to lodge their appeal. All they required was a certified copy of the decree or order sought to be appealed from. Even in that case, Order XLI Rule 1 A of the Civil Procedure Rules provides that the certified copy of the decree or order appealed from may be filed subsequently after the filing of the Memorandum of Appeal.

Even if one were to consider the fact that the file of the lower court went missing and that the Applicants were acting in person, they have not shown how that prevented them from filing the Memorandum of Appeal.

I am not satisfied that the Applicants are entitled to the discretion sought. They have not shown good and sufficient cause for not filing the appeal in time.

I, therefore, dismiss the application dated 26<sup>th</sup> June, 2002, with costs to the Respondents.

Dated and delivered at Nairobi this 17<sup>th</sup> day of November, 2004.

**ALNASHIR VISRAM**

**JUDGE**