



**Mwangi & another v Gitau (Miscellaneous Case E825 of 2024)
[2024] KEHC 16237 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16237 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS CASE E825 OF 2024**

LP KASSAN, J

DECEMBER 19, 2024

BETWEEN

ISAAC KIRAGU MWANGI 1ST APPLICANT

JOSEPH MUINDE 2ND APPLICANT

AND

GEORGE GITAU RESPONDENT

RULING

1. This is an Application for stay pending appeal and leave to appeal out of time. I have read the submissions, affidavits and authorities. In order to dispose off this appeal, I wish to note the following;
 1. The impugned Judgement was entered on 8th July 2024. This Application was filed on 10th September 2024 - around three months after Judgement assuming that no stay was granted at entry of Judgement which is unlikely. Sometimes a decision to appeal comes after the expiry of the period in which an appeal must be launched. This is because circumstances change and it is human nature that people make decisions at different times. The law must accommodate every one and not only those who are perfect by looking at the reasons for delay and the period. These timelines are not cast in stone. There are instances, not necessarily in this case, where litigants are comfortable with judgments because they could be expecting some payments which fail at the last minute. This delay appears reasonable.
 2. The Right of Appeal.
This is a constitutional right and cannot be infringed. This right exists as manifested by hierarchy of Courts in Kenya. Unless there are exceptional circumstances such as and not limited to an abuse of court process, it is rare for this right to be ignored.
 3. Similar Application Lower Court.



I note that a similar Application was filed at the Lower Court by a different advocate. This should not happen. Nevertheless, there is no evidence that both advocates knew that they were doing the same thing in different Courts. According to the replying affidavit dated 16/9/2024, it is averred that the Applicant intimated that it never gave consent to the firm of Kimondo to act on their behalf. Unfortunately, the said affidavit has only up to paragraph 5. In as much as this is not encouraged, the Court appreciates that sometimes litigants are so desperate or lack legal knowledge to the point of filling several Suits just to get orders or "Justice". Should they be punished by denying them prayers? This is a matter that must be considered carefully before any dismissal. The court must balance the fear of the "unknown" and ignorance with justice. You cannot throw the baby with bath water.

4. Prejudice the rights to enjoy fruits of judgment. If this court was to allow enjoyment of fruits of judgment, and the appeal succeeds, the Appellant may suffer irreparably and so conditions must also follow

The Respondent has a right to enjoy the fruits of his Judgement. The said Judgement is now six months old and at this juncture the Court must balance the right to Appeal and enjoyment of fruits of Judgement. To achieve this, the court must look at who is likely to be prejudiced and whether there will be a remedy. The right of appeal if given conditions will ameliorate

5. Memorandum of Appeal

The award was for Ksh 400,000/- and the injuries indicated as " Fracture to the left tibia malleolus." It is true that liability is not contested.

2. Taking into account the short period in which an appeal has been lodged, this Court is inclined to enlarge time of Appeal. Secondly, taking into account the nature of injuries suffered by the Plaintiff, I shall direct that the Applicant deposits half the decretal amount to the Respondent's advocate Account and the balance to a joint interest earning Account in the name of both advocates within 30 days from today failure to which stay of execution of the Judgement shall lapse.

3. The Applicant shall bear costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF DECEMBER 2024.

L. KASSAN

JUDGE

In the presence of:

No appearance for Applicant

Nambalu for the Respondent

Carol - Court Assistant

