



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS APPLICATION NO.E058 OF 2022

JIPRAPH MUNGAI NJUGUNA.....APPLICANT/INTENDEDAPPELLANT

JOSEPH NGINYO.....2ND DEFENDANT

VERSUS

BERNARD MWANGI NJAGI.....RESPONDENT

RULING

- 1) On 29th October 2021, the trial court delivered judgment in the sum of ksh.1,098,240/= in favour of the respondent and against the intended appellant/applicant plus another being general and special damages for the injuries sustained by the respondents.
 - 2) Being aggrieved, the applicant took out the instant motion dated 2.2.2022 whereof he is seeking for inter alia:
 - i. *Leave to file an appeal out of time.*
 - ii. *An order for stay of execution of the trial court's decree pending appeal.*
 - 3) The applicant filed the affidavit sworn by Harriet A. Sang in support of the instant motion. The respondent filed a replying affidavit he swore to oppose the motion.
 - 4) I have considered the grounds stated on the face of the motion dated 2nd February 2022 and the facts deponed in the rival affidavits. I have also taken into account the rival submissions made by learned counsels appearing in this matter. The first order sought is an order for leave to file an appeal out of time. The applicant regrets that he took a long time to give instructions to the advocate to mount an appeal within the time provided to file an appeal.
 - 5) The respondent on the other hand is of the submission that the applicant basically did not take steps to have the appeal filed. It is pointed out that there was not inadvertence shown on the applicant's part.
 - 6) In determining such an application, the court has a very wide discretion to extend time so long as a party provides sufficient reason. The record shows that the decision sought to be impugned was made on 29th October 2021 and the instant application was filed on 2nd February 2022. I find that there was a delay of four (4) in filing the instant motion.
 - 7) It is not in dispute that the delay was solely on the part of the applicant. The applicant basically delayed giving his advocate instructions to lodge an appeal. The applicant admits the mistake.
 - 8) There is no evidence that the delay was blatant and intentional.
- I find the delay not inordinate. I will excuse the applicant and extend time to him to lodge his appeal out of time.
- 9) The second prayer sought is that for stay of execution of the trial court's decision pending appeal. It is the submission of the applicant that unless an order for stay is granted, he would suffer substantial loss in that the respondents would not be in a position to refund the decretal sum should the appeal turn successful.
 - 10) The respondent did not respond to the applicant's assertion who instead concentrated on attacking the applicant's intended appeal as lacking in merits.

11) The applicant offered to provide security for the due performance of the decree in form of a bank guarantee. Again, the respondent did respond to the applicant's offer. Having considered the material placed before this court plus the rival submissions I find the applicant's motion to be meritorious. I allow the motion and grant the following orders:

a. The applicant is granted leave of 15 days to file an appeal out of time.

b. An order for stay of execution of the decree of the trial court is granted pending appeal on condition that the applicant provides a bank guarantee for the decretal from a reputable bank within 45 days. In default the order for stay shall automatically lapse.

c. Costs to abide the outcome of the intended appeal.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 25TH DAY OF MARCH, 2022.

.....

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff

.....for the Defendant