



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MAKUENI**

**HC. MISC. CIVIL APPLICATION NO. E012 OF 2020**

**MOTOROLOGY LIMITED.....1<sup>ST</sup> PLAINTIFF/ APPLICANT**

**FAITH KABURA WAIREGI.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**-VERSUS-**

**BENSON MUTUA MUTISO.....DEFENDANT/RESPONDENT**

**RULING**

1. This application brought by way of Notice of Motion dated 26/10/2020 and filed on 28/10/2020, seeking extension of time to file appeal and stay of execution in Tawa Magistrate's Civil Suit No. 134 of 2019. After filing, the matter was not pursued with the normal zeal in such application.
2. I note that the matter came before this court severally and ultimately the court issued directions that the application be canvassed by way of written submissions.
3. Thereafter, both the applicant's counsel M/s Kimondo Gachoka & company and respondent's counsel M/s Mulyungi & company filed written submissions to the application. The respondent's counsel further filed supplementary submissions and supplementary affidavit both on 6<sup>th</sup> July 2021.
4. As I sat to write this ruling, I have now seen an email from Mulyungi & associates advocates, indicating that the application was withdrawn vide a notice of withdrawal dated 16/7/2021.
5. However, having combed the file, I see no such notice of withdrawal filed by the advocate for the applicant M/s Kimondo Gachoka & company.
6. Coming back to the present application, judgment was delivered in Tawa magistrate's court on 4/8/2020 and the present application was filed on 28/10/2020 – a period slightly more than two and a half months.
7. In terms of the proviso to section 79G of the Civil Procedure Act (cap.21), I find no reason why this court should decline to grant extension of time to appeal as the period is not so long as to amount to inordinate delay.
8. As for the request for stay of execution, the provisions of Order 42 Rule 6(2) of the Civil Procedure Rules apply.
9. Thus the first consideration is whether the application was filed without undue delay. I find that though there was a delay of more than 2 ½ months such delay was not inordinate.
10. Turning now to the issue on whether the applicant is likely to suffer substantial loss if the stay orders sought are not granted, I note that the intended appeal is on quantum of damages only. In my view, therefore, if the whole amount is paid, and the appeal succeeds, the applicant is likely to suffer substantial loss if the amount so paid is not repaid. I will thus grant stay subject to payment of part of the decretal sum to the respondent.
11. As regards the provision of security by the applicant, in my view, the part of the decretal amount to be paid by the applicant herein will be sufficient security.
12. Consequently, and for the above reasons, I order as follows:-

*1) I grant extension of time for the applicant to file appeal. The appeal will be filed within 14 days from today.*

*2) I grant stay of execution of decree or judgment subject to the applicant paying part of the decretal amount Kshs.250,000/= to the respondent through counsel within 30 days from today.*

*3) If order (2) above is not complied with then the stay orders herein granted will automatically lapse.*

*4) The costs of this application will follow the decision in the appeal, but if orders (1) and (2) above are not complied with, then the costs of this application will be to the respondent herein, and payable by the applicant.*

Delivered, signed & dated this 4<sup>th</sup> day of April, 2022, in open court at Makueni.

.....

GEORGE DULU

JUDGE