



Peter William Kinyanjui & another v Pauline Njeri Wanjiku (Civil Appeal 740 of 2021) [2022] KEHC 12454 (KLR) (Civ) (19 August 2022) (Ruling)

Neutral citation: [2022] KEHC 12454 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL 740 OF 2021

JK SERGON, J

AUGUST 19, 2022

BETWEEN

PETER WILLIAM KINYANJUI 1ST APPLICANT

SOLOMON MEANGI NJOROGE 2ND APPLICANT

AND

PAULINE NJERI WANJIKU RESPONDENT

RULING

1. The subject matter of this ruling is the motion dated July 18, 2022 taken out by the appellants whereof they sought for the following orders:
 - i. That this application be certified urgent, service thereof be dispensed with and the same be hard *ex-parte* in the first instance.
 - ii. That this honourable court be pleased to grant interim stay of judgment delivered by the Honourable Principal Magistrate D M Kivuti delivered on January 15, 2021 sitting at Milimani in Civil Suit no 5757 of 2019, holding the appellants 90% liable and awarding the respondent general damage –ksh 350,000/=, special ksh 7,455/= plus costs and interest, pending the hearing and determination of this application.
 - iii. That this honourable court be pleased to grant a stay of judgment delivered by the D M Kivuti delivered on January 15, 2021 sitting at Milimani in Civil Suit no 5757 of 2019, holding the appellants General damage-ksh 350,000/=, special ksh 7,455/= plus costs and interest, pending the hearing and determination of the appeal.



- iv. That this honourable court be pleased to grant leave or extension of time within which to file the memorandum of appeal and deem the memorandum of appeal dated November 4, 2021 and filed November 13, 2021 as being properly on record.
 - v. That this honourable court be pleased to grant an order for stay of all proceedings in the trial court, pending the hearing and determination of this appeal.
 - vi. That this honourable court allow the applicants/ appellants to furnish the court with security in the form of a bank guarantee from a very reputable bank in Kenya.
 - vii. That the application be heard inter partes on such date and time as this honourable court may direct.
 - viii. That this honourable court be pleased to issue any other order and/or direction it deem fit to grant in the circumstances.
 - ix. That the costs of this application abide the outcome of the appeal.
2. The applicants filed in support of the motion the affidavit sworn by Anertia Salinder Gulenywa. When served with the aforesaid application, the respondent filed the replying affidavit of Musili Mbiti to oppose the same.
 3. Miss Gulenywa, learned advocate for the appellants prosecuted the application *ex-parte* on behalf of the appellants when the respondent's advocate failed to attend the virtual court session. However, I am enjoined by law to consider the respondent's replying affidavit in spite of the absence of the respondent and her counsel.
 4. I have considered the grounds stated on the motion and the facts deponed in the rival affidavits. I have also considered the brief oral submissions of the appellants' learned counsel. The substantive order sought by the appellants are twofold. The first is an order for stay of execution of the decree of the trial court pending appeal and secondly, an order for leave or for extension of time to file an appeal out of time and that the memorandum of appeal filed herein be deemed as properly filed with leave of court.
 5. It is the submission of the appellant that Hon D M Kivuti learned Principal Magistrate on January 15, 2021 delivered a judgment awarding the appellants a sum of ksh 350,000 as general damages and ksh 7,455/= being special damages plus costs and interest.
 6. Being dissatisfied, on November 13, 2021 the appellants filed the memorandum of appeal dated November 4, 2021 to challenge the decision. The appellants further pointed out that on October 21, 2021 that lady Justice Meoli delivered a ruling in which she granted the appellants leave of 14 days to file an appeal out of time.
 7. The appellants' counsel avers that the appellants filed the appeal ten (10) days out of the time fixed by the court owing to what the learned advocate stated to be technological challenges and unavoidable circumstances. It is argued that application was filed in good faith and with no reasonable delay.
 8. In response to the appellants' averments, the respondent filed the replying affidavit sworn by Musili Mbiti to oppose. It is the argument of the respondent that the appellants have failed to provide plausible reasons for the delay to file the memorandum of appeal within the timelines fixed by the



court. It is also argued that the appellants filed the instant application after an unreasonable delay of nine months.

9. Having considered the averments, it is not in dispute that on October 21, 2021, Lady Justice Meoli granted the appellants 14 days to file an appeal out of time. The applicants did not file the appeal within 14 days as ordered but they instead filed the same after the lapse of 24 days.
10. The appeal was filed outside the period fixed by the court without leave. No plausible reasons have been provided to justify the delay to file the appeal within the timelines granted. The reason the appellants have advanced to explain the delay is no plausible. It is not true that technology filed for over ten (10) days.
11. I find no merit in the instant motion. The same is dismissed with costs being granted to the respondent.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 19TH DAY OF AUGUST, 2022.

J. K. SERGON

JUDGE

In the presence of:

..... for the 1st Applicant

..... for the 2nd Applicant

..... for the Respondent

