



**Kurawa Salt Industries Limited v Baya & 12 others & another (Miscellaneous Application 19 of 2022) [2022] KEHC 17270 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 17270 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
MISCELLANEOUS APPLICATION 19 OF 2022  
SM GITHINJI, J  
OCTOBER 27, 2022**

**BETWEEN**

**KURAWA SALT INDUSTRIES LIMITED ..... APPLICANT**

**AND**

**BARAKA KAHINDI BAYA & 12 OTHERS ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant filed the present Notice of Motion dated March 29, 2022 seeking the following orders:
  1. Spent.
  2. Spent.
  3. That the proposed appellant be granted leave to appeal out of time against the whole judgment of the Hon Chepseba Chief Magistrate, delivered by Hon EK Usui on his behalf on February 7, 2022 at Malindi.
  4. That the memorandum of appeal annexed hereto be deemed as duly filed and served.
  5. That upon granting of Order 3 & 4 above, the Honourable Court do grant a stay of execution of the judgment of the Hon Chepseba Chief Magistrate, delivered by Hon EK Usui on his behalf on February 7, 2022 at Malindi pending the hearing and determination of the appeal herein.
  6. That the costs of this application be provided for.
2. The application is based on the grounds on the face of it and supported by the annexed affidavit sworn on March 29, 2022 by Mohamed Hussein A. Kaderdina who deposed that the Respondents have since the delivery of the judgment by the lower court on February 7, 2022, commenced execution



proceedings by attaching the Applicant's property. Mohamed added that their request for a copy of the judgment and proceedings made on February 15, 2022 was yet to be granted as at the time of filing this application.

3. Mohamed further deposed that the Respondents are people of straw and would not be able refund the decretal sum in the event that the intended appeal succeeds.
4. The Respondents opposed the application. They filed a replying affidavit sworn on April 11, 2022 by Baraka Kahindi Baya who deposed that the impugned judgment was delivered and sent to the respective parties via email on February 7, 2022. That even before the impugned attachment, the Applicant was served with a proclamation notice but failed to take any action.
5. The application was canvassed by way of written submissions. As at the time of writing this Ruling, only the Respondent had filed its written submissions. I have considered those submissions and find that the following issues call for determination:
  1. Whether leave should be granted to file an appeal out of time.
  2. Whether the Applicant is entitled to an order for stay of execution of the judgment of the lower court pending appeal.
  3. Who should bear the costs of the application?

Whether leave should be granted to file an appeal out of time.

6. The statutory provision in respect to an appeal from the judgment or decree of a subordinate court to the High Court is Section 75G of the [Civil Procedure Act](#) which provides that:

79G. 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 any 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 order.

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.

7. It is not disputed that judgment in the lower court was delivered on February 7, 2022 and that this application was filed on March 30, 2022 which was beyond the 30 days stipulated in section 79G of the [Civil Procedure Act](#). The Applicant gave an explanation that they were yet to receive typed copies of the proceedings and judgment. The Respondents contention is that the judgment was delivered electronically to the parties' via email on February 7, 2022.
8. Looking at paragraph 3 of the affidavit in support of the application, Mohamed confirmed that the said judgment was indeed delivered electronically via the parties' email address. As much as I think that the application was filed timeously, I am not convinced that the Applicant has demonstrated any good and sufficient cause for not processing the appeal within time. Given the position, I find no purpose to delve into the issue of whether or not stay pending appeal should be granted.
9. The upshot is that the Applicant's application dated March 29, 2022, lacks merit and is dismissed with costs to the Respondents.

**RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 27TH DAY OF OCTOBER, 2022.**

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**S.M. GITHINJI**

**JUDGE**

**In the presence of; -**

**1. Mr Ole Kina for the Appellant**

**2. Mr Chamwada for the Respondent**

