

REPUBLIC OF KENYA

IN THE HIGH COURT OF

AT NAIROBI

MISC APPLICATION NO. 214 OF 2020

WILFRED KANUNI SAGWE.....1ST APPLICANT

RONALD NYABOGA NYAMBASORA.....2ND APPLICANT

VERSUS

AGNES NGINA KIOKO & NICHOLAS MANTHI KIOKO

(suing as the admin of the estate of STEPHEN KIOKO NGULI).....RESPONDENTS

RULING

There is a judgment in favour of the respondents against the applicants in the lower court dated 8th November, 2019. The applicants were aggrieved by the said judgment but did not file the appeal in time. There is now before me an application filed on 19th June, 2020 under Sections 1A, 1B, 3A, 63 (e) 79G and 95 of the Civil Procedure Act, Order 6 rule 6 and Order 51 rule 1 of the Civil Procedure Rules, seeking a stay of execution of the lower court judgment, extension of time to file the appeal out of time and also to extend time within which to serve the Memorandum of Appeal and Record of Appeal.

There is also another prayer to stay the declaratory suit filed in the lower court against Monarch Insurance Company Limited to enforce the judgment of the lower court. The application is supported by grounds set out and the supporting affidavit of the advocate for the applicants. The application is opposed and there is a replying affidavit sworn by the 2nd respondent.

I have gone through the submissions filed by both parties. In what has become a standard requirement, once it is demonstrated substantial loss may be incurred if stay is not granted, the orders sought should be given. The applicants have stated they are ready to abide by any conditions set by the court.

The respondents on the other hand have stated in the replying affidavit at paragraph 10 thereof that in the event the application is allowed then the applicants should be ordered to deposit the entire decretal sum set out in a joint account as security.

I recognize the fact the applicants have the right of appeal while the respondents have a judgment in their favour which they are keen to execute. I know the adverse consequences of staying a suit which ordinarily compromises expeditious disposal of litigation. However, in the instant case the applicants have offered to post security which in my view is sufficient to tilt the courts discretion in their favour.

In balancing the interests of the parties herein, I shall allow the application on condition that the entire decretal sum is deposited in a joint interest earning account in the names of both advocates appearing for the parties. This shall be complied with within 30 days from the date of this ruling. The respondents however shall have the costs of this application.

For avoidance of any doubt, the application is allowed in terms of prayers 4, 5 and 6. The memorandum of appeal shall be filed within seven days of this order while the record of appeal shall be filed within 30 days from the date of this ruling.

Dated and delivered at Nairobi this 25th day of February, 2021.

A.MBOGHOLI MSAGHA

JUDGE