



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL & TAX DIVISION**

**COMMERCIAL CASE NO. 528 OF 2010**

**PETER THURANIRA.....PLAINTIFF/RESPONDENT**

**VERSUS**

**J. N. WACHIRA ALIAS JOHN HARMAN WACHIRA Alias**

**JOHN WACHIRA T/A LION MOTOR**

**DEALERS & TECHNICAL INSTITUTE.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**ZION HIRE PURCHASE & INSURANCE LTD.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**RULING**

1. In the application before me dated 21.7.2020, the Defendants/Applicants seek stay of execution of the judgment of this Court on 12.6.2020 pending the hearing and determination of the Application. They also seek extension of time to file appeal against the said judgment and extension of time within which to file a letter requesting typed proceedings.

2. The Court did enter judgment in favour of the Plaintiff/Respondent against the Defendants/Applicants for Kshs. 660,000/= together with interest at Court rates from 27.1.95 and costs.

3. The Defendants/Applicants claim that judgment was delivered without notice. As such, their failure to attend delivery of judgment was not intentional. By the time they discovered that judgment had been delivered, the time for filing appeal had expired.

4. The jurisdiction of the High Court to extend time is stipulated in Section 7 of the Appellate Jurisdiction Act as follows:

***The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired:***

5. Rule 4 of the Court of Appeal Rules reiterates this power of the High Court as follows:

***The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.***

6. The explanation proffered by Defendants/Applicants of the delay in filing an appeal is that they had no notice of the delivery of the judgment. It is noted that the judgment was delivered on 12.6.2020. By dint of Rule 75 of the Rules, the notice of appeal ought to have been filed by 26.6.2020. The Application seeking extension of time to file the appeal is dated 21.7.2020. This delay of less than 30 days in my view, is not inordinate. In any event the reason for delay is reasonable and has not been controverted.

7. As regards the prayer for stay of execution, the same cannot be granted simply because no appeal has been filed upon which such stay of execution order could be anchored.

8. In the end, I allow the Application on the following terms:

a) The Defendants/Applicants shall file the notice of appeal within 7 days of today's date.

b) The Defendants/Applicants shall cause the record of appeal to be prepared and filed within 21 days of filing of the notice of appeal.

c) In default of any of the orders herein the leave granted herein shall automatically lapse.

d) Given that the Application was not opposed, there shall be no order as to costs.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 16TH DAY OF APRIL 2021**

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**M. THANDE**

**JUDGE**

**In the presence of: -**

.....**for the Plaintiff/Respondent**

.....**for the Defendants/Applicants**

.....**Court Assistant**