

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

MISC. CIVIL CASE NO.7 OF 2021

RAYMOND OKOTH.....APPLICANT

VERSUS

PRINCIPAL SECRETARY MINISTRY OF EDUCATION & 4 OTHERS.....RESPONDENTS

RULING

1. Counsel submitted orally on the application dated the 22/2/2021. I have considered the affidavits filed, the oral submissions and the law.
2. There is no dispute that judgment was delivered on the 23/10/2020 against the applicant. The applicant has explained that they could not file their Notice of appeal within the requisite 30 days from the date of judgment because of the restrictions of court operations as a result of the Covid-19 pandemic and also because he could not move as his is blind. He has explained that once he obtained the judgment he advised his counsel to lodge an appeal. Though the said reasons are challenged by the Respondent, in my view the applicant has offered a reasonable explanation why he could not lodge his Notice of appeal within the requisite period stated in law. I therefore extend time to file the Notice of appeal the memorandum of appeal and Record of Appeal. The Notice of appeal and memorandum of appeal shall be filed within 30 days from the date of this Ruling.
3. On the stay of execution, the applicant seeks a stay of execution of the judgment and decree of the court delivered on the 23/10/2020 pending the hearing and determination of the intended appeal in the Court of Appeal. The judgment the applicant seeks to stay was delivered by then Hon. Onjoro who is a Senior Resident Magistrate (S.R.M) in the Chief Magistrate's Court in Kisii. I take it that it could be an error that the applicant seeks to have the appeal filed in the Court of Appeal and not the High Court.
4. There is no draft of the memorandum of appeal. I am unable to determine if the applicant has an arguable appeal or not. The copy of judgment attached indicates that the plaintiff's suit was dismissed with costs. What is due is execution for the costs awarded.
5. I therefore stay execution of the decree of costs pending the hearing and determination of the intended appeal. Costs be in the cause.
6. This matter will be mentioned after 30 days to confirm compliance.

DATED, SIGNED AND DELIVERED AT KISII THIS 27TH DAY OF JULY 2021.

R.E. OUGO

JUDGE

In the presence of:

Mr. Orondo for the Applicant

Respondent Absent

Mr. Orwasa Court Assistant