



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

CIVIL CASE MISC APPL. NO. E320 OF 2021

STEADFIRST TRAINERS & CONSULTANTS LIMITED..... APPLICANT

VERSUS

ACTION AFRICA HELP INTERNATIONAL.....RESPONDENT

RULING

1. The Application dated 7th July, 2021 seeks orders that **the judgment on costs entered on 21st May, 2021 by Hon. E. Kagoni, Principal Magistrate and subsequent decree in respect of Milimani CMCC 9817 of 2018 Steadfirst Trainers & Consultants Limited v Action Africa Help International be stayed pending the hearing and determination of the intended Appeal.**

2. Secondly, **the Applicant be granted leave to file an appeal out of time against the entire judgment delivered by Hon. E. Kagoni, Principal Magistrate, on 21st May, 2021 in respect of Milimani CMCC 9817 of 2018 Steadfirst Trainers & Consultants Limited v Action Africa Help International.**

3. Thirdly, **the draft Memorandum of Appeal annexed hereto be deemed as duly filed and served.**

4. The application is premised on the grounds set out on the face of the application and is supported by the affidavit sworn by Wilson Gathogo. It is averred that the intended Appeal is arguable with high chances of success. The delay in filing the Appeal is blamed on the delay by the court registry in supplying the Applicant with a copy of the judgment. The Applicant is apprehensive that if the execution proceeds the Appeal will be rendered nugatory and will thereby suffer substantial loss.

5. The application is opposed. The Respondent filed the grounds of opposition dated 19th July, 2021 which state as follows:

1. The application is unmerited and misconceived.

2. The application has been brought in bad faith and with sole aim of denying the Respondent the fruits of their hard earned judgment.

3. The application has been brought with unreasonable delay.

4. The Applicant's intended Appeal is hopeless with nil chances of success.

5. Consequently, the application is an abuse of the process of this honourable court and should be dismissed with costs.

6. The application was canvassed by way of written submissions which I have considered.

7. Order 42 rule 6(2) Civil Procedure Rules 2010 provides for stay of execution as follows:

“No order for stay of execution shall be made under sub-rule (1) unless –

(a) The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

8. On enlargement of time, the principles applicable were set out by the Supreme Court of Kenya in the **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR** as follows:

“This being the first case in which this court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a court should consider in exercise of such discretion:

- 1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;**
- 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;**
- 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;**
- 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court.**
- 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;**
- 6. Whether the application has been brought without undue delay; and**
- 7. Whether in certain cases, like election petitions, public interest should be consideration for extending time.”**

9. The Judgment of the lower court was delivered on 21st May, 2021. The instant application was filed on 7th July, 2021. The delay is not inordinate and has been explained to the satisfaction of the court. Copies of letters requesting for the copy of the judgment have been exhibited.

10. To balance the competing interests of the parties, I allow the application on condition that the Applicant do deposit Ksh.100,000/= as security in a joint interest earning bank account of the advocates on record for the parties or in court within 30 days from the date hereof. The Appeal to be filed and served within 14 days from the date hereof.

Dated, signed and delivered at Nairobi this 28th day of October, 2021

B. THURANIRA JADEN

JUDGE