



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CIVIL MISC. APPL. NO. E009 OF 2021

DINAN KAMBUA.....1ST APPLICANT

PETER ATUTI.....2ND APPLICANT

VERSUS

TITUS WAMBUA MASEKI

alias WAMBUA MASEKI alias

WAMBUA MASIKI.....RESPONDENT

RULING

1. Before court is an application by way of a Notice of Motion dated 10th June 2021 by **Dinah Kambua & Peter Atuti** seeking for:-

- **Leave to appeal out of time.**
- **Stay of execution; and**
- **To be allowed to furnish a bank guarantee as reasonable security.**

2. The application is predicated on grounds that the 30 days within which to file an appeal have lapsed, the Applicants are aggrieved by the Judgement in Civil Suit No. 71 of 2019 and intend to appeal against the Judgement and should execution issue they are likely to suffer irreparable loss.

3. The application is opposed in a replying affidavit of **Titus Wambua Maseki** dated 23rd June, 2021 wherein he asserts that the application is incompetent and bad in law, no explanation has been given for the delay in preferring the appeal and the move is meant to frustrate the Respondent in realizing the fruits of the judgement in his favour.

4. Having considered the application, the replying affidavit and submissions by counsel there are three issues for consideration:

- a) Whether or not to extent time for filing of the appeal.*
- b) Whether or not to grant a stay.*
- c) Whether or not to accept the security offered.*

5. An appeal is ones right and the court should not be quick to deny a litigant an opportunity to ventilate his case. The delay in filing the appeal out of time has been explained, and the same is not inordinate. Consequently, therefore the time be an is hereby extended by 15 days of the date of this ruling.

6. In the intended appeal the Applicant has taken issue with the Judgement and the award which they assert is inordinately high. The sum is by no means a high figure and it would therefore be reasonable to allow a stay pending hearing and determination of the appeal.

In this regard;

- a) A security of the sum of Kshs. 1 million by way of a bank guarantee which is valid for 1 year from the date of this ruling**

be furnished.

b) The appeal be filed within 15 days of the date hereof.

c) Costs to abide the outcome of the appeal.

DELIVERED AND SIGNED AT GARISSA THIS 21ST DAY OF OCTOBER, 2021.

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ALI ARONI

JUDGE