



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO.384 OF 2019**

**AMUTAPI LIKUYANI JIMMY.....APPLICANT**

**-VERSUS-**

**CAROLINE OMONDI OTIENO (suing as the legal representative of the estate**

**of John Omondi Omolo Owoko(Deceased).....RESPONDENT**

**RULING**

1. This is a ruling on application dated 14<sup>th</sup> June 2019. It seeks leave to lodge appeal from the judgment in Molo CMCC No.358 of 2017 out of time. The application is supported by affidavit sworn by **Frankline Nyaga** the **Administration Manager** for the applicant herein.
2. Grounds on the face of the application are that the applicant is aggrieved by the judgment delivered in the absence of the defendant on 23<sup>rd</sup> April 2019 in Molo CMCC No.358 of 2017.
3. Further that there was delay in receiving instructions from the appellant for appeal purposes due to necessity of consultation involving insurance brokers and insurance company; that further consultation resulted to conclusion that the applicant's Advocates seek to lodge an appeal.
4. He averred that failure to file appeal in time was not deliberate as consultations with insurance firm were necessary to give way forward on the case after delivery of judgment.
5. In response, the respondent filed replying affidavit sworn by the respondent herein on 4<sup>th</sup> July 2019. She averred that she filed Molo CMCC No.358 of 2017 way back on 31<sup>st</sup> October 2017 seeking compensation for the death of her husband **Omondi Omolo Owoko** in a road accident which occurred on 16<sup>th</sup> August 2016.
6. She averred that judgment was entered in her favour on 23<sup>rd</sup> April 2019. She added that the applicant had ample time to appeal within the prescribed time as required in law.
7. Respondent further averred that a notice of entry of judgment was served upon the applicant through the Advocates on record who sought to have him honour the judgment. He stated that this application is tailor-made to delay and/or deny him fruits of her judgment.
8. She further averred that the judgment delivered by the chief magistrate's court was sound and any intended appeal lacks merit, is an afterthought, inept, raises no issues of appeal and has no chances of success. She prayed that the application be dismissed with costs.

**ANALYSIS AND DETERMINATION**

9. I have considered averments by the parties herein and submissions filed. On perusal of the court file, I have not seen a copy of lower court proceedings. The respondent has not attached any document to confirm that the applicant was notified of delivery of judgment herein. I however note that notice of entry of judgment is dated 24<sup>th</sup> May 2019. This application was filed on 14<sup>th</sup> June 2019. The date of receipt of the said notice cannot be ascertained from the court record but this application was filed about 2 weeks after.

10. In view of the fact that there is no confirmation as to whether the applicant was present or represented in court on 23<sup>rd</sup> April 2019 when judgment was delivered and also in view of the fact that the delay is not prolonged, I find it fair and just to grant the applicant an opportunity to file appeal out of time.

**11. FINAL ORDERS**

- 1. Application dated 14<sup>th</sup> June 2019 is allowed.**
- 2. Applicant to file appeal within 14 days from today's date**
- 3. No orders as to costs.**

**Ruling dated, signed and delivered at Nakuru this 27<sup>th</sup> day of February, 2020**

.....

**RACHEL NGETICH**

**JUDGE**

**IN THE PRESENCE OF:**

Jeniffer/Schola – Court Assistant

Ms. Obura holding brief for Momanyi Counsel for Applicant

Ms. Mwita holding brief for Kibichi Counsel for Respondent