

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL MISC APPL. NO. 688 OF 2019

DAVID WACHIRA.....APPLICANT

VERSUS

JOSPHINE KAMBUA KATIWA & FESTUS MUNYOKI KATIWA

(suing as the administrators

Of the estate of the late **MWANIKI KATIWA**).....**RESPONDENTS**

RULING

1. The application dated 29th October, 2019 principally seeks orders that this honourable court be pleased to extend time and grant leave to the Applicant/Appellant to lodge a memorandum of appeal out of time against the judgment and decree entered against the Applicant by Honourable K.I. Orege (Mr.) Senior Resident Magistrate, in Milimani Chief Magistrates Court Civil Suit No. 4433 of 2011 given on 30th May, 2019.
2. Secondly that this honourable court be pleased to stay execution of the judgment and decree in Milimani Chief Magistrates Court Civil Suit No. 4433 of 2011 pending hearing and determination of the intended appeal.
3. The lower court delivered judgment in favour of the Respondent on 30th May, 2019 for Ksh.2,150,000/= general damages. The Applicant is aggrieved by the said judgment and is desirous of filing an Appeal. The delay in filing the Appeal is attributed to the time taken to obtain instructions and obtaining an opinion in the matter. The Applicant is apprehensive that the Respondent will move to execute the judgment. It is further averred that the intended Appeal has high chances of success. The Applicant is willing to furnish security for the due performance of the decree.
4. In a replying affidavit filed in opposition to the application, it is stated that no justifiable reason for the inordinate delay and therefore the application ought to be dismissed.
5. I have considered the application and the response to the same. The Applicant has explained the reasons for the delay. The reasons do not fully satisfactorily explain the delay. However, to balance the competing interests of the parties, I allow the application on condition that the decretal sum is deposited in a joint interest earning bank account of the counsels for the respective parties or in court within 30 days from the date hereof.

Dated, signed and delivered in Nairobi this 29th day of May, 2020

B. THURANIRA JADEN

JUDGE