



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS APPLICATION NO. 70 OF 2019**

**EUTHYCHUS MURIUKI KANGANGI .....1<sup>ST</sup> APPELLANT**

**ENDERSON MWANGONDE MWAGONA..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**MOHAMMED ALI ABDALLA (Suing on their own behalf and as the administrators**

**of the estate of the late ALI MOHAMED ALI) .....RESPONDENT**

**CORAM: Hon. Justice R. Nyakundi**

**Ms. Kairu & Mc Court Advocates for the Applicant**

**Ms. S. N. Ngare Advocates for the Respondent**

**RULING**

This is an application by the appellants in which they seek two orders from this Court. First this Honourable Court be pleased to grant leave to file an appeal out of time against part of the Judgment delivered on 27.1.2019 as per attached Memorandum of Appeal pursuant to Section 1A, 3, 3A, 79G and 95 of the Civil Procedure Act. Secondly, this Honourable Court be pleased to order stay of execution of the Judgment Decree in Civil Suit No. 5 of 2016 pending the hearing and determination of the intended appeal.

In support of the application are grounds on the face of the motion and an affidavit by **Isabela Nyambura** filed in Court on 11.11.2019. The respondent filed a notice of preliminary objection under Section 7 of the Civil Procedure Act. On consideration of the matter, I take the following view:

- (1). On enlargement of time pursuant to the guiding principles in Salat v IEBC {2014} eKLR the applicants have satisfied the criteria for enlargement to file an appeal out of time.***
- (2). On stay of execution pursuant to Order 42 Rule 6, I exercise discretion to grant stay of execution pending the hearing and determination of an appeal on the following conditions:***
  - (a). That the decretal sum of Kshs.1,936,282/= be deposited in a joint earning interest account of both counsels within thirty (30) days from today's date or in the alternative a bank guarantee issued from the reputable financial institution be deposited with the Deputy Registrar within the same period.***
- (3). The draft Memorandum of appeal be deemed as duly filed within time.***
- (4). The appellants be supplied with the trial Court record and Judgment for purposes of preparing the record of appeal to be ready within the thirty (30) days period.***
- (5). Directions of the matter be and is hereby scheduled on 14.7.2020***
- (6). The cases of the application to abide the outcome of an appeal.***

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 25<sup>TH</sup> DAY OF JUNE 2020**

.....

**R. NYAKUNDI**

**JUDGE**

This Ruling has been delivered in absence of the parties in terms of Article 48 and 159 of the Constitution and practice directions in Gazette Notice by the Chief Justice No. 3137 dated 17.4.2020.