REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPLICATION NO. 53 OF 2019

HELLEN NANJALA.....APPELLANT/APPLICANT

VERSUS

JAVO MOHAMED ABDI.....1ST RESPONDENT

BENSON THAIRU GAITHUGO.....2ND RESPONDENT

RULING

1. The appellant has filed a Notice of Motion dated 24th January, 2019 supported by the grounds set out on the body thereof and the affidavit of *Hellen Nanjala*. The appellant is seeking leave of this court to file an appeal out of time and costs of the application. The Motion stands unopposed.

2. In her affidavit, the deponent averred that an ex parte judgment was entered in her favour on 16th November, 2018 in CMCC NO. 1738 OF 2017 and that being dissatisfied with the award on quantum, she intends to lodge an appeal against the same.The deponent added that by the time her advocates managed to obtain a copy of the judgment, the stipulated timelines for appealing had lapsed and were followed closely by the Christmas break. A draft memorandum of appeal is annexed to her affidavit.

3. I have duly considered the grounds set out in the Motion and affidavit and its supporting affidavit. The applicable provision is *Section 79G of the Civil Procedure Act* that grants a 30-day window period for a party to lodge an appeal against the decision of a subordinate court. Where this is not complied with, sufficient cause must be shown. In my analysis thereof, I will draw guidance from *Apa Insurance Limited v Michael Kinyanjui Muturi [2016] eKLR* and *Dilpack Kenya Limited v William Muthama Kitonyi [2018] eKLR* respectively.

4. It is not in question that there has been a delay in filing the appeal. This was explained by the applicant and I find such explanation to be reasonable. In any case, the same is not inordinate.

5. On the issue of whether or not there exists an arguable appeal, I have perused the judgment availed to me together with the memorandum of appeal, which indicates that the applicant intends to challenge the award on damages as being inordinately low in view of the injuries sustained by herself coupled with her submissions previously filed. In my view, these give rise to arguable issues that ought to be addressed in the appropriate forum.

6. As concerns the prejudice that is likely to befall the respondents, it was observed that no response was filed to the application. Under the circumstances, I have no basis on which to find that the respondents stand to suffer any prejudice in the event that the application is allowed.

7. In view of the foregoing, I will allow the Motion on merit and order that the applicant files her memorandum of appeal within 14 days from today. Costs of the application shall await the outcome of the Appeal.

Dated, signed and delivered at **NAIROBI** this **25th** day of **February, 2019**

L. NJUGUNA

JUDGE

In the presence of:

……. for the Appellant/Applicant

……. for the 1st Respondent

……. for the 2nd Respondent