



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS CIVIL APPLICATION NO. 19 OF 2019**

**ERICK FRANCIS WAFULA..... APPLICANT**

**AND**

**SHEBAN OBONGITA WERE..... RESPONDENT**

**RULING**

1. The Motion dated 14<sup>th</sup> February 2019 seeks enlargement of time within which to file an appeal from a judgment given in Mumias SPMCCC No. 165 of 2015. The said judgment was delivered on 14<sup>th</sup> November 2018. The motion was lodged herein on 14<sup>th</sup> February 2019. That would mean the Motion was lodged more than sixty days after the lapse of the time allowed to file appeal.

2. The affidavit in support of the application was sworn by the advocate for the applicant. He avers that he was instructed after the time for lodging the appeal had expired. He says that the applicant stood to suffer loss should execution ensue. He says that the applicant was willing to offer security as court may deem fit, including depositing the decretal amount in a joint account in the names of the advocates on record for the parties.

3. The application is opposed. The affidavit in reply to the application was sworn by the advocate for the respondent. His position is that the delay in filing the appeal in time has not been explained. He says that he notified the applicant's counsel of the judgment by a letter dated 17<sup>th</sup> January 2019, only for the respondent to move the court on 14<sup>th</sup> February 2019, some twenty-eight days thereafter. He points out that the proposed appeal has no chances of success.

4. I note that the applicant has offered to deposit the decretal amount as security. That way the respondent would suffer no loss, save for delay in having the money in his hands before the matter is disposed of, should it be disposed of in his favour. I trust that the applicant is entitled to appeal, and to get a second opinion on the verdict of the trial court.

5. I shall accordingly exercise discretion in favour of the applicant and dispose of the said Motion in the following terms:

**(a) That the Motion dated 14<sup>th</sup> February 2018 is allowed, so that applicant is granted 28 days to lodge an appeal against the judgment in Mumias SPMCCC No. 165 of 2015;**

**(b) That there shall be stay of execution of the said judgment pending appeal;**

**(c) That the applicant shall within fourteen days deposit the total decretal amount in court or in a joint interest earning account in the names of advocates on record for him and the respondent;**

**(d) That in default of (c) above execution shall ensue without any further reference to the court;**

**(e) That the matter shall be mentioned after twenty-eight days for compliance on a date to be given at the delivery of this ruling; and**

**(f) That costs shall be in the cause.**

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 28<sup>TH</sup> DAY OF JUNE, 2019**

**W MUSYOKA**

**JUDGE**