

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 521 OF 2016

FAIMA VENTURES LIMITED 1ST APPELLANT

FAITH NJERI MATHIA 2ND APPELLANT

PATRICK KIMANI MATHIA 3RD APPELLANT

VERSUS

KENYA ORIENT INSURANCE LIMITED.....RESPONDENT

(Appeal from the Order and Ruling of Hon.Rachel Ngetich delivered on 22nd July 2016 in CMCC No.5702 of 2013)

JUDGMENT

The appellants herein moved the lower court to extend time for payment of costs that had been awarded to the respondent. The court declined to extend time and being aggrieved by the said order, the appellants lodged this appeal. In dismissing the appellants' application for extension of time the lower court stated as follows,

“Court orders cannot be made in vain as allowing breach will occasion injustice to the other party affected by the failure or delay. Failure to comply and bringing application for extension of time without sufficient reason is abuse of court process. I see no reason to allow this application. I do dismiss it with costs to the plaintiff. The application dated 16th September 2015 stands dismissed as earlier ordered.”

When the appellants filed the application for extension of time, they were invoking the court's discretion to do so. The appellate court may interfere with the discretion of the lower court, but only when it is shown the lower court acted on wrong principles in denying the offended party the order sought.

It must also be shown that the lower court misdirected itself and arrived at the wrong decision leading to injustice –see **Mbogo & Another vs. Shah (1968) EA 93.**

I have looked at the pleadings, the reasons advanced in the motion seeking the extension of time and the submissions of the parties. I have come to the conclusion that the lower court did not proceed on wrong principles, neither can it be faulted for any mistake on the record. That discretion was applied judiciously and I have no reason to differ with the lower court.

This appeal must therefore fail and the same is dismissed with costs to the respondent.

Dated, signed and delivered at Nairobi this 21st Day of June, 2018.

A. MBOGHOLI MSAGHA

JUDGE