

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS APPLICATION NO. 251 OF 2017

JANE WANJA NJIRU T/A MICROFINS SERVICES.....APPLICANT

VERSUS

POSTMAIL SACCO LTD.....RESPONDENT

RULING

This is an application for leave to extend time to file an appeal and stay of execution of the judgment of the lower court delivered on 11th July, 2016. The application is under Sections 3A, 79G and 95 of the Civil Procedure Act, Order 22 Rule 22, Order 42 Rule 6, Order 50 Rule 6 and Order 51 Rules 1 and 3 of the Civil Procedure Rules.

The reasons for seeking those orders are set out on the face of the application alongside two affidavits annexed thereto. The application is opposed and there are grounds of opposition filed on behalf of the respondent. Both parties have filed submissions thereto.

The application was filed a year after the delivery of the judgment. No sufficient reason has been advanced to justify the delay. That notwithstanding, the applicant is required to demonstrate that substantial loss may be occasioned if the order of stay is not granted and that the intended appeal is arguable so that it is not rendered nugatory.

There is a draft Memorandum of Appeal containing seven paragraphs which has been annexed to the application. The applicant has a right of appeal but at the same time the respondent has a valid judgment in his favour. The applicant has offered to provide security as the court may deem fit. At the same time no serious prejudice has been alleged shall befall the respondent if the orders sought are not granted.

I am inclined to grant the orders sought on the following terms. There shall be stay of execution of the lower court judgment provided that the applicant deposits half of the decretal sum in an interest earning account in the names of both advocates on record. The balance of the decretal sum shall be secured by a bank guarantee. These conditions shall be fulfilled within 30 days from the date of this ruling. The time to file the appeal is also extended by 30 days from the date of this ruling. The costs shall be on appeal.

Dated, signed and delivered at Nairobi this 30th day of October, 2018.

A.MBOGHOLI MSAGHA

JUDGE