

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

MISC APPLICATION 191 OF 2016

NANCY GATWIRI.....1ST APPLICANT

SAMUEL KAMANDE MUGO.....2ND APPLICANT

VERSUS

PETER NJENGA KIIHIKO.....RESPONDENT

RULING

The applicants were aggrieved by the Judgment of the lower court but did not file an appeal in time. The application before me is by way of Notice of Motion dated 6th May, 2016 under Sections 79G, 1A, 1B,3A of the Civil Procedure Act and Order 42 Rules 1, 2 and 3 and Order 51 Rules 1 and 13 (2) of the Civil Procedure Rules seeking a stay of execution of the lower court judgment delivered on 23rd April 2015 and leave be granted to file the appeal out of time.

The reasons for the orders sought are set out on the face of the application alongside an affidavit sworn by Caroline Kimeto, the legal officer of ICEA LION General Insurance Company Limited. The application is opposed and there is a replying affidavit sworn by the respondent. Both counsel have filed submissions and cited some authorities.

It would appear from the material before me, the intended appeal relates to quantum of damages awarded to the respondent following a road traffic accident. I say so because liability had been agreed at 80% on the part of the applicants and 20% contributory negligence on the part of the respondent.

The judgment of the lower court was delivered without notice to the parties or their advocates. This is a ground that has not been challenged by the respondent. Had that notice been delivered, I believe the applicants would have lodged the appeal in good time. There is every reason therefore to grant leave for the filing of the appeal out of time.

On whether or not there should be stay, I recognize the fact that the respondent is entitled to the fruits of his judgment, but at the same time the applicants have a right of appeal directed to the subject of quantum. They have offered to furnish reasonable security that the court may order.

Considering that the appeal is challenging the quantum only and that justice must look at both sides, the order that commends itself is that a substantial sum should be paid to the respondent and the balance be invested in an interest earning account.

Accordingly the applicants shall file the appeal within 30 days from the date of this ruling and in addition pay the respondent a sum of Kshs. 1.5 Million out of the decretal sum within the same period. The balance thereof shall be invested in an interest earning account in the names of both advocates (within the same period of 30 days) pending the hearing and determination of the appeal. The costs shall be on appeal.

Dated, signed and delivered at Nairobi this 29th Day of March, 2017.

A. MBOGHOLI MSAGHA

JUDGE