



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MILIMANI NAIROBI**

**MISC APPLICATION NO. 397 OF 2016**

**GENERAL PLASTICS LIMITED .....APPLICANT**

**VERSUS**

**DOMINIC MULINGE KIMANTHI .....RESPONDENT**

**RULING**

The applicant was the defendant in the lower court while the respondent was the plaintiff. The respondent's claim in the lower court arose from a road traffic accident in which he blamed the applicant's agent for negligence. After the trial however, the lower court found in favour of the respondent and awarded Kshs. 450,000/= general damages. The appeal was not filed in time and the reasons for delay have been set out in the application and the supporting affidavit.

The main reason however is that no notice was given before the judgment was delivered, and the applicant's advocate came to know of the Judgment on receiving a letter from the advocate for the respondent. Soon after, this application was filed. The delay has therefore been explained to the satisfaction of the court. From the draft memorandum of appeal, it is contended that the respondent was also to blame for the accident and also that the award was exorbitant given the injuries sustained by the respondent.

The respondent is prepared to accept half of the decretal sum pending the hearing and determination of the appeal. On the other hand, the applicant is prepared to offer security for the due performance of the decree. This application would not have proved necessary had counsel engaged in the proposals that are clear.

Since the main complaint is on quantum, I am inclined to grant leave to file appeal out of time because this is a right that has not been extinguished by any law. Accordingly, leave to file the appeal out of time is hereby granted on condition that the applicant shall pay the respondent a sum of Kshs. 200,000/= out of the decretal sum, and the balance to be deposited in an interest earning account in the names of both advocates for the parties. The filing of the appeal, payment to the respondent and the deposit of the balance of the decretal sum, shall be complied with within 30 days from the date of this ruling. The costs shall be on appeal.

***Dated, signed and delivered at Nairobi this 26 Day of April 2017.***

**A. MBOGHOLI MSAGHA**

**JUDGE**