

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL APPLICATION NO. 55 OF 2017

ANATASIA AUMA ONDIEK (*Suing as the legal rep. in the estate of*
LENUS OTIENO ONDIEKI (DECEASED) **RESPONDENTS**

VERSUS

JOEL KIMETEI ARAP LANGAT **1ST APPLICANT**

RAEL CHESANG KEMEI **2ND APPLICANT**

RULING

The Notice of Motion dated 25th April 2017 has three prayers:-

- (a) A temporary stay of execution pending the hearing of this application and the appeal to be filed.**
- (b) That leave to file appeal out of time be granted.**
- (c) Costs of the application.**

The grounds for the application are that the time for filing the appeal has lapsed and the applicant wishes to appeal against the judgment delivered on 15th June 2016. Further that the stay of execution granted by the lower court has lapsed and that delay in filing the appeal was on the part of the Advocate who did not update the defendant of the judgment.

The application was canvassed orally on 23rd May 2017. I note however that Counsel for the applicant filed written submissions on 6th June 2017.

I have considered the application and all the material placed before me. I am not persuaded that it has merit. Whereas in the supporting affidavit it is stated that the delay arose from the mistake of Counsel not informing the applicants of the judgment in his submissions Counsel states that the delay arose because the Insurance Company did not give him instructions. The Insurance Company was not a party in the litigation and the reason given for the delay is not plausible. Neither is it excusable noting that the Advocate for the applicants was aware of the judgment as early as 1st July 2016 when they entered into a consent for payment of the costs (see annexure "AAO-2". The circumstances here are very different from those in the two cases cited and hence distinguishable. The application is dismissed with costs to the respondent.

E. N. MAINA

JUDGE

29/6/2017

Signed, dated and delivered in open Court in presence of:-

Odumbe holding brief for Okoth for Respondent

Court Assistant: Serah Sidera