



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISC APPLICATION NO. 550 OF 2016**

GEORGE NJENGA ..... APPLICANT

VERSUS

SAMUEL MUOMGA KIOGE .....RESPONDENT

**RULING**

In this application the applicant seeks an order to enlarge time for lodging an appeal following a judgment of the lower court delivered on 12<sup>th</sup> August, 2016. If that prayer is granted, the applicant prays that he be allowed to lodge an appeal out of time. There is also a prayer for a stay of execution of the said judgment.

The lower court proceedings related to a road traffic accident. After the hearing, the lower court made a finding that the applicant was liable to the respondent to the extent of 80% while the respondent was 20% to blame. The court proceeded to award Kshs. 600,000/= general damages plus Kshs. 2,500/= special damages, the total of which was subjected to 20% contributory negligence leaving a balance of Kshs. 479,500/=.

The applicant was aggrieved by the said judgment but instructions to lodge an appeal were delayed leading to the prayers set out in this application. The application is supported by an affidavit sworn by the legal officer of the applicant in addition to the grounds set out on the face of the application.

The application is opposed and there is a replying affidavit sworn by the respondent. Both counsel have filed written submissions. Several authorities have been cited which the court has appreciated. From the draft memorandum of appeal annexed to the application, the lower court has been faulted for awarding general damages which were too high in relating to injuries sustained by the respondent. Further that the court did not analyse the law and evidence on record. The court also faulted for ignoring the applicant's submissions.

I have related the application to the cited provisions of law and also considered that the order sought may be granted by the exercise of the courts discretion. The judgment was delivered on 12<sup>th</sup> August, 2016 and this application filed on 18<sup>th</sup> October, 2016. The delay of 2 months is not inordinate in the circumstances of the case.

The respondent has a judgment in his favour and all things being equal, he should not be denied the fruits of his judgment. At the same time, the applicant has the right of appeal which should also not be denied. I have balanced the interests of both parties, and come to conclusion that the application should be allowed on the following terms.

The time to lodge appeal is enlarged and the applicant allowed to file the appeal within 30 days from today. There shall be a stay of execution of the lower court judgment provided that the applicant pays the respondent a sum of Kshs. 200,000/= and also provide a bank guarantee for the balance within 30 days from today. The costs shall abide by the decision of the appeal.

***Dated, signed and delivered at Nairobi this 27<sup>th</sup> Day of July, 2017***

**A. MBOGHOLI MSAGHA**

**JUDGE**