



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISC No. 175 OF 2017**

**WABURI SAMUEL.....1<sup>ST</sup> APPLICANT**

**GEOFFREY GICHOMO MWANGI.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**SUSAN KIVYUVI MUSYOKA.....RESPONDENT**

**RULING**

This is an application for stay of execution of the judgment of the lower court and for leave to file an appeal out of time. The judgment was delivered on 24<sup>th</sup> March, 2017. In that judgment the respondent was awarded Kshs. 1,500,000/= general damages, 1,750,530/= special damages, costs and interest.

The applicants wish to challenge that judgment on appeal but did not do so in time hence this application. The grounds are set out on the face of the application. There is also a supporting affidavit sworn by the Claims Director of Direct Line Assurance Company Limited which insured of the motor vehicle involved in the accident. The reasons for seeking the orders above are sufficiently set out in the said grounds and affidavit. The application is brought under Sections 3A, 79G and 95 of the Civil Procedure Act and Orders 22 Rule 22, 42 Rule 6, 50 Rule 6 and 51 Rules 1 and 3 of the Civil Procedure Rules.

The application is opposed and grounds of opposition have been filled. Both counsel have filed submissions which I have read. Some authorities have also been cited. I am persuaded that in the circumstances the delay in lodging the appeal has been sufficiently explained and that substantial loss may result if a stay is not given. However, I bear in mind that the respondent has a valid judgment in her favour and that she should not be denied the fruits of her judgment.

I am guided by the provisions of law cited alongside the authorities quoted by both counsel. I am persuaded that leave should be granted and accordingly direct that the appeal shall be filed within 30 days from today.

The applicants stated that they are ready to furnish reasonable security as directed by the court. I direct that they shall pay the respondent a sum of Kshs. 500,000/= and cause the balance to be held in an interest earning account in the names of both advocates on record. These two conditions shall be complied with within 30 days from today. The costs shall abide by the result of the appeal.

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

**A. MBOGHOLI MSAGHA**

**JUDGE**