

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC APPLICATION NO. 583 OF 2015

RELIABLE FREIGHT SERVICE LIMITED ...1ST APPLICANT/ APPELLANT

KALU KILONZO2ND APPLICANT/ APPELLANT

VERSUS

HENRY INGARU MULAMARESPONDENT

RULING

The lower court delivered judgment against the applicants herein on 4th November, 2015. The applicants were aggrieved by the said judgment but did not lodge an appeal within the prescribed period of 30 days. It was not until 6th December, 2015 that instructions to appeal were given.

There is now before me an application under Section 79G, Order 42 Rule 6, Order 22 Rule 22, Order 50 Rule 6 of the Civil Procedure Rules and Section 1A and 3 A of the Civil Procedure Act seeking orders that there be a stay of execution of the decree in CMCC No. 8132 of 2013 Nairobi, that leave be granted to file appeal out of time and the memorandum of appeal attached be deemed as filed upon payment of court fees, and finally that there be a stay of execution of the decree pending the hearing and determination of the intended appeal.

The grounds upon which the application is based are set out on the face of the application and there is also a supporting affidavit by the legal officer Fidelity Shield Insurance Company Limited.

The application is opposed and there is a replying affidavit sworn by the respondent. Both learned counsel have filed written submissions which I have considered. The orders sought are discretionally but the applicant has a right of appeal. When time computation is done, the delay was for five days.

Soon after, the applicant filed this application. The delay in filing the application cannot be said to be inordinate. The reasons for the delay are adequately explained in the grounds and supporting affidavit. They are in my assessment plausible.

In satisfaction of the requirement of Order 42 of the Civil Procedure Rules, the applicant has offered post security. I see no prejudice that may be occasioned to the respondent if the orders sought are granted. Accordingly, I hereby grant leave to appeal out of time and order that the applicant shall regularize the filing of the memorandum of appeal within fourteen days of today.

There shall be a stay of execution pending the determination of appeal, but as security the applicant shall cause to be deposited in an interest earning account a sum of Kshs. 800,000/= in the names of the two advocates for the applicant and respondent within the next 30 days. The costs herein shall be in the cause.

Orders accordingly.

Dated and delivered at Nairobi this 27^h day of July, 2016.

A.MBOGHOLI MSAGHA

JUDGE