



attached.

8. The application is opposed by the 1<sup>st</sup> respondent, who has filed a Replying affidavit sworn by George Sylvester J. Khasiani sworn on 5<sup>th</sup> September, 2016. The respondent No. 1 raises the issues that, the applicant has not met the conditions set in the Provisions of Order 46 Rule 6 (2) CPR 2010 namely:-

*(a) No demonstration of substantial loss in event orders are not granted;*

*(b) No security is offered.*

9. Further, it is averred that the applicant has not demonstrated why he failed to file appeal with time. The respondent also avers that he is a person of means.

10. In any event, the 2<sup>nd</sup> respondent who was allocated part of the decretal amount to pay has not sought orders for stay of the execution of the instant decree. The respondent also avers that there is no decree drawn to enable court issue stay orders sought.

11. After going through the materials before the court, and the submissions herein, I find the issues arising are;

*(a) whether leave and extension of time to file appeal sought is meritorious?*

*(b) Whether the applicant has met the threshold of grant of stay of execution pending appeal?*

*(c) What are the orders in the circumstances?*

12. In **NICK SALAT CASE**, the Supreme Court held that the discretion to extend time is unfettered. It is incumbent upon the applicant to explain the reason for delay and whether there are extenuating circumstances that can enable the court to exercise its discretions in favour of the applicant.

13. In the instant case, the applicant explains the breakdown of the communication between its insurance with the advocates in transmission of the instructions to appeal.

14. The judgment was delivered on 27<sup>th</sup> July; 2015. The instant application was filed on 1<sup>st</sup> September, 2016. The delay is slightly over a month. The court is prepared to accept the reasons adduced as same are not seriously contested.

15. The court therefore finds same justified and leave to file and serve memo of appeal is granted and thus appeal shall be lodge within 14 days.

16. On the stay of decree, the court notes that the appeal is yet to be filed. The provisions invoked of orders 46 Rule 6 (2) of the CPR cap 21 2010 applies where there is an appeal filed and/or lodged.

17. The leave has been granted to file the appeal. The court notes the content of the draft memo annexed. The memo impugns the verdict essentially on the element of liability and the assessment of the damages, which quantity is branded as inordinately high.

18. The impugned award which applicant is supposed to shoulder is slightly over Ksh. 700,000/=. The applicant is ready to deposit the amount in an interest earning account or as court may direct.

19. The applicant has averred that he is a man of means yet he does not disclose the nature of work he does or the source of income he has. The court finds that such an amount may not be recovered in event the appeal succeeds and thus the applicant may suffer hardship.

20. In the interest of justice, the court finds that though the appeal is yet not filed, the appellant would

ordinarily be required to file a substantive application for stay pending appeal on lodging of the appeal. To avoid prolonging the process, the court will make orders taking into account the tenets of the Provisions of Articles 10(2)(b), 159(2), of the Constitution and Sections 1A and 1B CPA (on substantive justice and overriding objectives) in the following terms:-

*(1) Leave is granted to file and serve appeal within 14 days;*

*(2) Temporary stay granted for 14 days until appeal is lodged;*

*(3) If appeal is lodged as stated above, stay granted on conditions that;*

*- 50% of the decretal amount which applicant was ordered to pay is paid to the respondent and the balance is put in interest earning account in names of the applicant advocates and 1<sup>st</sup> respondent advocates within 30 days after filing the appeal;*

*(4) In default of the above, execution to proceed;*

*(5) Costs in the main cause;*

*(6) The orders herein to apply in HC. Misc. 466 of 2016.*

**SIGNED, DATED and DELIVERED** this 22<sup>ND</sup> day of **SEPTEMBER**, 2016.

**C. KARIUKI.**

**JUDGE.**

**In the Presence:-**

..... **for the Appellant.**

..... **for the Respondents.**

..... **Court Assistant.**