

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO. 189 OF 2014

K M B.....1ST APPLICANT

T S.....2ND APPLICANT

-VERSUS-

JOSEPH MUTHAA KING'ORI.....1ST RESPONDENT

MORAN AUCTIONEERS.....2ND RESPONDENT

AND

CATHERINE WAIRIMU NDERITU.....INTERESTED PARTY

RULING

1. The Motion dated 19th November 2014 seeks grant of leave to the applicants to file appeal out of time in respect of a decree made by the lower court in Milimani Commercial Court CMCDC No. 347 of 2011 on 14th June 2012, and stay of recovery of the sums ordered by the said court pending appeal. The applicants proceed on the grounds that they were not served with the court papers in CMCDC No. 347 of 2011 hence they did not have the opportunity to defend the suit.
2. The application is responded to by the first respondent. He asserts that the divorce papers were properly served on the applicants. He has exhibited copy of an affidavit of service sworn on 20th September 2011 as proof thereof. There is no evidence that the said replying affidavit has been responded to.
3. I gave directions on 12th May 2016 that the application would be disposed of by way of written submissions. Both parties have complied and filed their respective written submissions. I have perused through the same, together with the authorities cited. I have noted the authorities cited.
4. The first respondent has exhibited an affidavit of service where it is alleged that the applicants had been served. The applicants did not respond to the allegations made in the replying affidavit to the effect that they had been properly served with the divorce papers, and that they chose to ignore them. In the face of such facts I do not see the basis upon which I can grant the orders sought herein.
5. Consequently, I find that the application before me dated 19th November 2014 is without foundation and I do hereby dismiss it with costs to the 1st respondent. The order made on 21st November 2014 staying the decree is hereby set aside.

DATED and SIGNED at NAIROBI this 16TH DAY OF DECEMBER, 2016.

W. MUSYOKA

JUDGE

DELIVERED and SIGNED this 20TH DAY OF DECEMBER, 2016.

R. OUGO

JUDGE