

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. APPLICATION NO. 319 OF 2013

REV. APOLLO MOYI.....APPLICANT

VERSUS

GEORGE ONYANGO ONYANGO.....RESPONDENT

R U L I N G

The application dated 23-12-2013 prays among others for leave to file application out of time and stay of the lower court's judgment pending the determination of the appeal. The application has raised several issue and of particular significance is that the lower court delivered its judgment without the relevant notice and that he only learned of the same when the respondent taxed his bill.

The respondent has opposed the same vide replying affidavit dated 6-2-2014. The respondent argues that the appellant was economical with the truth and that he was given all the opportunity to challenge the judgment. In any event he has brought the application six months after the delivery of judgment.

From the reading of the rival affidavits it appears to me that there was complicity on the part of the trial court not issuing the relevant notice to the parties. This cannot be faulted on the part of the applicant. The parties have not exhibited the decree from the court showing that the respondent was awarded a sum of Kshs. 250,000/=. That information is however contained in the replying affidavit which has not been controverted.

Taking into consideration the above observation it would not be fair to disallow the applicant's application. There is no prejudice which shall be suffered by the respondent. He shall have the opportunity to challenge the appellant on appeal.

For the foregoing reasons the application is allowed. The appellant shall file and serve his appeal within the next 14 days from the delivery of this ruling. Costs of this application to the respondent.

Dated, signed and delivered at Kisumu this 12th day of March, 2015.

**H.K.
JUDGE**

CHEMITEI