



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ELC NO. 23 OF 2012**

**SNOWBALL INVESTMENT**

**LTD.....PLAINTIFF**

**-VERSUS-**

**PRINCIPAL REGISTRAR OF TITLES & 4  
OTHERS.....DEFENDANTS**

**AND**

**KENCOAT LOGISTICS SERVICES LTD & ANOTHER.....INTERESTED  
PARTY**

**RULING**

1. In this an undated motion filed in court on 22.12.2014 and brought under section 1 A and B, section 3A of Civil Procedure Act, under Order 42 Rule 6(1) and (2), Order 50 and Order 51 of the Civil Procedure Rules, the applicant prayed for the following orders ;

1. Spent
2. That the Court be pleased to extend time and grant leave to the applicant to file their notice of appeal and record of appeal against the ruling delivered on 6<sup>th</sup> November 2014
3. The draft notice of appeal be deemed as duly filed
4. Spent
5. There be a stay of further proceedings pending the hearing and determination of the intended appeal.
6. Spent
7. There be a stay of execution of the entire ruling pending hearing of intended appeal or until further orders.
8. Costs of the application be provided for.

2. The motion is grounded on the 12 points on the face of the motion and the affidavit of Peter Ngang'a Kahura. The applicant pleaded that he was not notified of the date of delivery of the ruling and when they learn of it, the time for appealing had already lapsed. It is the applicants case that they have a meritorious appeal with high chances of succeeding. Further the applicants deposed that their appeal will be rendered nugatory if the orders of stay are not granted and they are willing to deposit any security as may be directed by this Court.

3. The plaintiff filed grounds of opposition to contest the application inter alia that the application is devoid of merit, applicants are guilty of indolence and the application is bad in law, fatally defective and should be struck out.

4. Thereafter parties filed written submissions which I have had occasion to read and consider in reaching this determination. There are three main prayers I am tasked to consider whether to grant or not to grant

**i. Extension of time to lodge a notice appeal and file record**

**ii. Stay of appeal proceedings in this matter**

**iii) Stay of the execution of the orders issued in the ruling of 6.11.14**

5. I have considered the pleadings and submissions rendered. The applicants have not given any reasons why they would have proceedings in this matter stayed. The ruling they intended to appeal against was on an interlocutory application. There is no prejudice stated to be suffered by the applicants if the matter proceeds to trial on merit of the main suit. Consequently I find prayer for stay of proceedings has been made without any basis and dismiss it.

6. The prayer for extension of time has some relation to prayer for stay of execution. I say so because if I do not extend time then the prayer for stay of execution will have no leg to stand on. Do I have the jurisdiction to extend time to lodge the notice of appeal and record of appeal? The applicants referred this Court to the following authorities in support of their application

**a) Court of Appeal Rules 2010**

**b) The Appellate jurisdiction Act Cap 9**

**c) Charogu vs Kaguru (1986) KLR 443**

**d) Butt vs Rent Restriction Tribunal (1982) KLR 419**

**e) Kenya Shell Ltd vs Kibini & Another (1986) KLR 416**

**f) Silvester N Chesoni (2002) KLR 867**

**g) Alex Wainaina vs Janson Mwangi Wanjihia (2015) KLR**

7. I wish to point out that the Court of appeal rules do not apply to this Court. Further the case laws cited were in relation to applications for extension of time made before the Court of appeal not this Court (High Court). The provisions of section 7 of the appellate jurisdiction Act states as follows; " Probably the applicants counsel should have picked a clue and realised that applications of this nature can only be made before the Court of appeal. It is not open for this Court to extend time to lodge an appeal to the Court of Appeal which is a higher Court. Therefore I hereby find that I can exercise discretion under section 1A, 1B and 3A under which this application is premised to extend time since the law does not donate to me such powers. The prayer for extension of time succeeds because the Notice of intention to appeal had not been lodged..

8. Lastly is the prayer for stay of execution. The applicants sought stay of execution of the ruling

delivered on 6.11.14 pending the hearing of their intended appeal or until further orders. I have found above and extended the time for filing an appeal to the Court of Appeal, the said appeal may be rendered nugatory unless the orders of stay of execution is granted.

In the ruling sought to be appealed against the court had granted prayer 3 of the motion the import of which is an order, of mandatory injunction compelling the applicants to demolish and pull down the boundary wall constructed in the suit premises L.R. No. MN/V/2382 which overlaps into plot no. MN/V/1517 grant the applicants a stay of execution for 28 days to enable them apply for extension of time in the Court of Appeal or seek such other orders as they shall deem.

9. In conclusion, the motion succeeds in part. The costs to the motion is awarded to plaintiff. The applicants shall however enjoy a stay of execution for pending appeal from the date of delivery of this ruling on condition that the notice of appeal is lodged within 7 days. In default, the stay shall automatically lapses.

**Ruling dated and delivered the 8th day of December 2015**

**A. OMOLLO**

**JUDGE**