



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CIVIL DIVISION**  
  
**MISCELLANEOUS CIVIL CASE NO.600 OF 2012**

**KENYA ELECTRICITY GENERATING COMPANY .....PLAINTIFF**

**VERSUS**

**FELIX DAUDI MBEVO..... DEFENDANT**

**R U L I N G**

The application before the Court is a Notice of Motion dated 24.10.2012. It seeks leave to appeal out of time. A second application by the same Applicant is dated 9.11.2012 and seeks stay of execution of the lower court decree in Milimani CMCC No.4448 of 2009 pending the intended appeal's final decision.

The Applicant/Defendant filed written submissions dated 29.11.2012. Perusal of the court file does not show that the Respondent who was the Plaintiff in the lower court filed any Replying Affidavit to oppose either of the two applications herein. The court's conclusion would therefore be that the Respondent/Plaintiff is not opposing either of the applications.

I have carefully considered the application to appeal out of time. I have come to the conclusion that it was filed without inordinate delay, taking into account the circumstances of this case. Furthermore, the order of review of the judgment of the lower court by that court, which is the one targeted by the intended appeal, was done when the suit had been fully settled through execution of the decree concluded and the decretal sum fully recovered. The issue which would arise is whether or not the lower court had jurisdiction to revisit a fully settled case to raise additional liability in a substantial way. Thus the intended appeal has a probable issue of an important legal principle to be argued. The appeal may also raise the issue as to how far a mistake of Counsel representing a party may be excusable and whether or not in some cases the gross negligence of an advocate may not be borne by the Counsel instead of heaping the consequences thereof on the client.

Finally, the intended appeal may also put into argument the issue as to whether or not the orders of the lower court in reviewing a fully executed and settled decree may or may not have prejudiced the judgment debtor at the time it was reviewed.

Concerning the application for stay of execution pending the outcome of the intended appeal, it seems clear to the court that the same will depend on whether or not the application to appeal out of time is granted.

For the above reasons the court's discretion is hereby exercised in favour of the applicant in the following orders:-

**ORDERS**

1. Applicant is granted leave to appeal out of time and the appeal shall be filed within 14 days in default of which the leave orders herein shall stand discharged.
2. Stay of execution is granted pending the final determination of the appeal.

**DATED and DELIVERED at Nairobi this 21<sup>st</sup> day of May, 2014.**

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**D.A. ONYANCHA**

**JUDGE**