

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

MISC. CIVIL APPLICATION NO.22 OF 2011

UAP PROVINCIAL INSURANCE COMPANY..... APPLICANT

VERSUS

MAURICE PHILEMON AKASA

PHOEBE ANDESIO AKASA..... RESPONDENT

RULING

Notice of Motion dated 3/2/2011 was heard and ruling to be delivered on 31/5/2011 by this court. Unfortunately the judge fell sick and was hospitalized for a long time. Hence the very long delay in finalizing the ruling. I deeply send my apology.

The prayers sought are leave to file appeal out of time, interim stay of execution of the decree passed on 11/11/2010 in CMCC 412/2006, and appeal proposed pending a stay be granted and leave be granted to file Memorandum of Appeal attached and that costs be in the cause.

There are 15 grounds pleaded:

The Judgment in lower court would be delivered on notice. No notice was given to Applicants counsel for delivery of judgment and the applicant is dissatisfied with judgment delivered on 11/2/2011 delay was excusable and if leave is not granted Applicant will suffer loss and damage. The Applicant is ready to deposit the decretal sum in an interest earning account and that granting the orders will be in the interest of justice.

The application is supported by affidavit of Maryanne Mungara claims manager of the Applicant. She swears that Notice to take judgment was never served.

I have considered application and the authorities offered. I have considered the considerable delay caused by courts absence. Since the Applicant has offered security by depositing decretal sum in an account to be operated by the two advocates, it is my view that application be allowed and orders be granted as prayed.

The Applicant shall call on the advocate for the Respondent and arrange to open a joint account in a reputable bank in the names of the two advocates within 21 days from today. Leave is granted to Applicant to file appeal as prayed within the next 21 days and stay of execution is hereby granted pending the hearing and determination of the proposed appeal.

Costs shall be in the cause.
Orders accordingly.

Dated and delivered at Nairobi this 8th day of March 2012.

**J.N. KHAMINWA
JUDGE**