



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**(MILIMANI COMMERCIAL COURTS COMMERCIAL & TAX) DIVISION**

**MISCELLANEOUS APPLICATION 296 of 2011**

**JOSEPH WAWERU NGANGA &**

**PETER NGANGA (*Suing on their own behalf and for benefit of the Estate of***

**FRANCIS NJUGUNA NGANGA, deceased)..... RESPONDENT**

**VERSUS**

**GIBSON KARIGE..... APPLICANT**

**RULING**

The application before the court is a Notice of Motion dated 8<sup>th</sup> July 2011 seeking for enlargement of time to file an appeal out of time, it also seeks a stay of execution of the decree pending the filing, hearing and determination the intended appeal.

By orders made earlier, the stay was granted on interim basis on condition that the whole decretal sum was deposited in court. On 1<sup>st</sup> August, 2011 the decretal sum of Ksh.967,705/- was apparently deposited in court.

Both parties filed their written submissions. The Respondents do not oppose the applicant's prayer to file appeal out of time. What they say is that since the applicant had consented to liability up to 75%, the decretal sum or part thereof now deposited in court should be released to them so that they can enjoy the fruits thereof.

I have considered the matter. Since the leave, to appeal out of time is not opposed and since the applicant seeks stay until the intended appeal is filed and finally determined, the court should also grant stay until then.

It is at the same time observed that the Respondents have not really and properly filed any application seeking release of the decretal sum or part thereof. That issue is, therefore, not really or properly before the court for determination. The Respondents would, therefore, be at liberty to formally apply, giving the applicants/appellant opportunity to reply. The court will then determine the issue on merit.

**ORDERS**

- 1. Leave to file appeal out of time is hereby granted.***
- 2. The intended appeal should be filed within 14 days or in default the leave to automatically lapse.***
- 3. Costs of this application in the intended appeal.***

Dated and delivered at Nairobi this 23rd day of April, 2012.

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**D A ONYANCHA**

**JUDGE**