

K-REP BANK.....APPLICANT

-versus-

MATHEW MBATIA NJARI T/A MATSON AUCTIONEERS.....RESPONDENT

RULING

In the motion dated 1st August 2011, K-Rep Bank, the Applicant herein, sought for the following orders:

- “1. That this application be certified as urgent and the same be heard ex-parte in the first instance.***
- 2. That pending the hearing and determination of this Application, the court be pleased to order a temporary stay of execution of the ruling entered on 8th July, 2011 in CMCC MISC.APPL.NO.14 OF 2011.***
- 3. That leave be granted to the Applicant to file an Appeal out of time against the ruling delivered on 8th July, 2011 in CMCC MISC.APPL.NO.14 OF 2011.***
- 4. That the Chamber Summons Application and Memorandum of Appeal annexed hereto be deemed as duly filed and served.***
- 5. That the Applicant herein is ready, willing and able to furnish security to the satisfaction of the court pending the hearing and determination of the Appeal.***
- 6. That the cost of this Application be provided for.”***

The motion is supported by the affidavit of George Muema. Mathew Mbatia Njari T/A Matson Auctioneers, opposed the motion by filing a replying affidavit. When the motion came up for *interpartes* hearing, learned counsels in the matter recorded a Consent Order to have the motion disposed of by written submissions.

I have looked at the material placed before this court and the rival written submissions. The main orders sought are a temporary order of stay of execution pending appeal and an order for extension of time to appeal against the decision of the Chief Magistrate's Court. The record shows that Hon. Wambilyanga, Learned Resident Magistrate, assessed the auctioneer's Bill of Costs at Ksh.42,704/= and directed that the auctioneer is entitled to immediate payment of the same upon releasing the repossessed goods. The Applicant states that it is aggrieved by that order and it intends to appeal, but the time to appeal lapsed. It is the Applicant's explanation that the delay to file an appeal within time was due to the delay by the court to supply proceedings. On appeal, the Applicant stated that it will argue *inter alia* that the Respondent did not have a valid licence to conduct auctioneering business. The Respondent on his part was of the view that the delay to file the motion was inordinate. It is clear from the facts deponed in the Replying Affidavit that the Respondent does not deny the fact that there was a delay in supplying the proceedings to the Applicant. I find the reason given to be plausible hence I think the Applicant is entitled to be given leave to appeal out of time. I hereby grant the Applicant leave of 15 days to appeal against the decision of Hon. Wambilyanga delivered on 8th July 2011. Pending the hearing and the determination of the intended appeal, I grant an order for stay of execution on condition that the Applicant deposits a sum of Ksh.42,704/= in an interest earning account in the joint names of learned advocates or firms of advocates appearing in this matter within 30 days from the date hereof. In default, the decree holder will be at liberty to execute. Costs of the Notice of Motion to abide the outcome of the intended appeal.

Dated and delivered this 17th day of August 2012.

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J. K. SERGON
JUDGE