



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Miscellaneous Application 210 of 2012**

**JACOB ODUOR ORODI**

**JOHANNES ODHIAMBO ORODI..... APPLICANTS**

**VERSUS**

**LINET AKELO AROKA..... RESPONDENTS**

**R U L I N G**

The application before me is dated 2<sup>nd</sup> April, 2012. It seeks a stay of execution pending the result of an intended appeal. It also seeks extension of the time to file the intended appeal.

The application related to Nairobi Commercial, Court Civil Suit Number 13531 of 2006. Judgment in it, awarding the respondent herein general damages in respect to injuries sustained by the respondent, was delivered on 14<sup>th</sup> September, 2011. This application was filed on 21<sup>st</sup> April 2012, a period of seven months down the line.

The intended appeal was supposed to be filed within 30 days of the delivery judgment aforesaid. It was not filed however. The reasons given for the failure includes the fact that there was a miscommunication between the advocates of the applicants and their insurers, the latter being the instructing client. That the instructing client was not made aware of the judgment in time to make a timely decision to appeal. The Applicants, accordingly, state that the mistake lay with their lawyers and the insurer and they, the applicants should not be penalized for the mistake of their advocates. They conclude by asserting that they have a good and arguable appeal because the damages of Ksh.140,000/- they were ordered to pay, is on the higher side for a cut wound, pains, swellings and loss of blood, sustained by respondents.

The application is opposed on the grounds that the delay to file this application is inordinate. Secondly, that the decision to appeal is intended to delay the enjoyment of the judgment and was an after-thought which was made in bad faith.

I have carefully considered the application. Insurers are always taken to be in communication with the insured directly or through the insurer's advocates. They are aware that like any other cases, time does not stop to wait for anyone and hence they must make prompt decisions or bear the consequences. Communication has also become easy and where a letter sent causes delay, the situation is or must be followed by a phone call. It is the view of this court, therefore, that the courts cannot be dictated by issues taking place in privacy of offices between parties and their advocates, unless there is reasonable cause.

In this case there was a delay of seven months before this application was filed. This court finds the delay inordinate and unreasonable. Furthermore a quick glance on similar cases would also tend to show that the sum of the general damages awarded was not manifestly excessive and unless there are other grounds for interference by this court, which do not appear to exist, the chances of success of the intended appeal are very low indeed.

The result that appears reasonable in these circumstances, therefore, is to dismiss this application, which this court hereby does. The second issue of stay of execution would in the circumstances be irrelevant. In any case none was sought in the lower court when the judgment was delivered, confirming

the view that this application is a result of an afterthought.

Costs are to the Respondent. Orders accordingly.

Dated and delivered at Nairobi this 30<sup>th</sup> day of October, 2012.

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**D A ONYANCHA**

**JUDGE**