



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
CIVIL APPEAL NO. 139 OF 2010

BETWEEN

ELDORET STEEL MILLS LIMITED:.....:APPLICANT

AND

PATRICK LUMUMBA LIKONO:.....:RESPONDENT

RULING

This application by way of Notice of Motion has been brought by the appellant under sections 95, 1A, 1B and 3 A 2 Rule 6 of the Civil Procedure Act and orders 42 rule 6, 50 rule 6, and 51 Rule 1 of the Civil Procedure Rules. It seeks one primary order that the time within which the applicant was required to deposit the decretal sum in a joint account of the parties' advocates be enlarged by 21 days. The main reason for the application is that the applicant was not able to comply with the said order within the time appointed because it has other decrees to satisfy.

The application is supported by an affidavit sworn by **Narindar Singh Lochab** a director of the applicant. In the affidavit it is deposed, *inter alia*, that the applicant has to satisfy decrees in several suits the total of which is colossal; that currently the applicant is beset with financial problems and requires the extended time to comply with the said order and that the delay in complying with the said order is not deliberate.

The application is opposed and there is a replying affidavit sworn by **Zephania K. Yego**, the respondent's counsel. In that affidavit, counsel has averred, *inter alia*, that as the time appointed for compliance has since elapsed it cannot be extended and further that sufficient reasons have not been advanced for the enlargement sought.

I have considered the application and the affidavits both for and in opposition to the application. I have also carefully considered, the submissions of counsel. Having done so, I take the following view of the matter. The jurisdiction to enlarge time is found in section 95 of the Civil Procedure Act which reads as follows:-

“95 where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may in its discretion from time to time enlarge such period, even though the period originally fixed may have expired.”

Order 50 Rule 6 is in similar terms. Te rule reads as follows:-

“6. Where a limited time has been fixed for doing any act or taking any proceedings under these

Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms if any as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made therein shall be borne by the parties making such application unless the court orders otherwise.”

So, an application to enlarge time for the doing of any act under the Act, Rules or order of the court may be enlarged even after the appointed time has expired. The only concern of the court being the justice of the case. On 19th January, 2011 I granted to the applicant an order of stay of execution on condition that it deposited the entire decretal amount in an interest earning account in a reputable financial institution in the joint names of the parties’ advocates within seven (7) days of the date of the order which was on 19th January, 2011. The deposit should therefore have made on or before the 26th day of the same month. It was not. This application was then lodged on 10th February, 2011, about 2 weeks after the expiry of the period appointed in the said order. In my view the delay is not a prolonged one and has been explained. The respondent did not deny that the applicant has to satisfy other decrees in other suits and that on its own it would not satisfy them without financial assistance. It is also significant that the respondent himself did not file any affidavit evidence to demonstrate whether he would be prejudiced by the extension sought beyond what is compensatable by costs.

In the result, the applicant has persuaded me that it deserves the enlargement of time to make the deposit. The time sought has already expired. The deposit will however involve paper work to be completed by the parties’ advocates. I will therefore extend the period of compliance for a further seven (7) days from the date hereof. The deposit should therefore be made in terms of my said order on or before 22nd March 2011 failing which this application shall stand dismissed.

The costs of this application to be borne by the appellant/applicant.

Orders accordingly.

DATED AND DELIVERED AT ELDORET

THIS 15TH DAY OF MARCH 2011.

**F. AZANGALALA
JUDGE**

Read in the presence of:

Mr. Nyairo for the Applicant and
Mr. Yego for the Respondent.

**F. AZANGALALA
JUDGE
15TH March, 2011**