



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

MISC. APPLICATION NO. 170 OF 2011

WAKUTHI JOHN NDAMBIRI..... PLAINTIFF/RESPONDENT

VERSUS

CHARLES MUNDIA 1ST DEFENDANT/APPLICANT
JAMES WAIREGI MWANGI..... 2ND DEFENDANT/APPLICANT

R U L I N G

This is the Applicant's application dated 30/8/2011 for the court to enlarge time for them to file Appeal.

- They also pray that the Draft Memorandum of Appeal be deemed as duly filed and served upon payment of requisite filing fees.
- There be stay of execution pending determination of the application and the intended appeal.

The application is supported by the grounds and the supporting affidavit of the 1st Defendant/Applicant.

I have gone through the record several times and I have not seen any Replying Affidavit nor Grounds of Opposition filed by the Plaintiff/Respondent, so the application is generally unopposed.

The Applicants say they were not notified of the delivery of Judgment on 5/7/2011. It's only when served with warrants of execution that they realized Judgment had been delivered. The Applicants goods were proclaimed on 23/8/2011 as shown by one of the annexures herein.

An order directing the Applicants to deposit ½ the decretal sum has been complied with. Mr. Kiama for Respondent opposed the Application saying it was an afterthought since the Applicants were well represented by Counsel. And that there was no Ground proved showing why there should be stay.

Under Order 50 rule 6 Civil Procedure Rules this court has power to enlarge time for doing a particular act for which a limited time has been fixed. By the time of filing this Application the time of filing appeal had lapsed.

The Applicant has explained of none communication of the outcome of EMBU C.M. CC No.144 of 2007 to them by their advocate then. If Judgment was delivered on 5/7/2011 and this Application was filed on 1/9/2011, I do not consider it to be inordinate delay. I see that there is a Draft Memorandum of Appeal already annexed which the Applicant through prayer 2 of the Notice of Motion dated 30/8/2011 that it be deemed as duly filed and served upon payment of the requisite filing fees.

I therefore grant the Applicant prayer 1 by enlarging the time of filing his Appeal to the time already covered. Prayer 2 is also granted and the payment of filing fees should be complied with within 7 days of this Ruling.

Prayer 4 is asking for stay pending the hearing of intended Appeal. Now that the Applicant has been allowed to file Appeal out of time and the draft Memo of Appeal deemed as filed then the remaining process should move with speed to have the records prepared.

Already deposited in court is half the decretal sum. Since I have not seen the lower court record I would not be in a position to deal with any of the issues related to the decretal sum.

I therefore grant stay of execution pending the determination of the Appeal.

Costs to the Respondent.

Orders accordingly.

DELIVERED, SIGNED AND DATED AT EMBU THIS 15TH DAY OF NOVEMBER 2011.

H.I. ONG'UDI

JUDGE