REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT BUNGOMA

Miscellaneous Application 41& 42 of 2002

PAN AFRICAN PAPER MILLS (E.A) LTD

JOASH CHILIVA WAFULA :::::::::::::::: APPLICANTS

~VRS~

AMOS BARASA SIFUNA :::::::::::::::: RESPONDENT

RULING

This is a ruling on two similar applications which were heard by Justice Mitey on 8/9/2003. The ruling was not delivered following retirement of the judge.

The Defendant's applications both dated 12/2/2002 seek for leave to file an appeal out of time from the judgment of M/S Mutende, Resident Magistrate, Webuye dated 30/11/2001 in RM CC No.85 and 88 both of 2001. The grounds supporting the application were argued by Mr. Nyairo for the Applicants. He submitted that the Applicants only came to know about the ruling after 30 days allowed for appeal had expired. It was not until the Applicants were served with a bill of costs by the Respondent's advocates that he came to know. The Applicants or their advocates were not present when judgment was delivered.

The second ground is that the Applicants wish to appeal against the quantum of damages awarded by the magistrate which he says is inordinately high.

The Respondent opposed the application. Mr. Kitiwa's brief was held by Mr. Makokha who argued the Respondent's case relying on the replying affidavit. He submitted that judgment was delivered on 30/11/2001. Both parties had appeared before the court on the 9th November 2001 and were duly notified of the date for judgment. The Applicants were under a duty to inquire about the judgment immediately it was delivered in the event that they or their advocate were not able to attend. No efforts have been made to explain why the Applicant failed to attend court on the date of judgment.

I am in agreement with the Respondent that the Applicants have not given any explanation why they or their advocate failed to go to court for delivery of judgment having been notified of the date of judgment earlier. However, I am aware of the fact that the Applicants should not be shut out from the doors of justice if they wish to appeal. For this reason, I allow the application and condemn the Applicants to meet the costs. The appeal to be filed within 21 days.

F. N. MUCHEMI

JUDGE

Dated, Delivered and Signed this 29 day of April 2010.

In the presence of Mr Makokha for Kitiwa for respondent.