

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Miscellaneous Application 6 of 2010

VICTOR MAINA NGUNJIRI.....1ST APPLICANT

WOODLY MERCHANTS.....2ND APPLICANT

VERSUS

MARY NJERI KARUMBI.....RESPONDENT

RULING

The off shoot of this ruling is the motion dated 21st January 2010 in which the applicants are seeking for two main prayers:

- (1) *Leave to appeal out of time against the judgment Muranga SRM Court delivered on 16th November 2009 vide the SRMCC Civil Case No. 359 of 2008.***
- (2) *There be a stay of execution of the judgment and decree of MURANGA SRMCC NO. 359 of 2008 pending hearing and determination of this application and the intended appellants appeal.***

According to the Applicant the trial court did not give notice of judgment hence they were not aware when the same was delivered until the time to appeal had lapsed. Secondly, they are of the view that the intended appeal has overwhelming chances of success. The Respondent/Plaintiff is of the view that the Defendants all along were aware of the date of judgment hence this application is filed in bad faith and is meant to be a delaying tactic. The Defendant is also of the view that the application was filed after a long delay.

I have considered the submissions of learned counsels appearing in this matter. I have also considered the material placed before me. The substantive suit in this matter was triggered by a road traffic accident which occurred on 11th January 2008 involving motor vehicle owned by the Applicant and which knocked down the Respondent herein. The Respondent herein suffered injuries and was forced to file a compensatory suit vide Muranga SRMCC NO. 359 of 2008. On 16th November the case was heard and judgment delivered on 16th November 2009 whereupon the Plaintiff was awarded Kshs.600,000/= as general damages. The Applicants herein intend to appeal against that judgment but time to appeal has lapsed. Under *Section 79 G of the Civil Procedure Act* this court has a wide discretion to extend time to appeal if it is satisfied that the Applicant has a good and sufficient cause to explain the delay. In this case the Applicants are saying that they only learnt of the judgment through a letter dated 1st December 2009. They aver that upon receipt of that letter, they rushed to Muranga Court to check on the court file but were unable to get the same until January 2010. The Respondent does not dispute that judgment was delivered in the absence of the Applicant. I am convinced that the Applicants have explained the cause of the delay which prevented them to file an appeal within time. One, they were not

aware of the date of the judgment and two, it took them time to trace the court file to enable them obtain typed proceedings. I find the application to be with merit. I grant the Applicants leave of 15 days to file the appeal out of time. It is necessary to maintain the status quo pending the filing of the appeal. Consequently I grant the Applicants stay of execution pending appeal on condition that they deposit the judgment sum in an interest earning account within 30 days from the date hereof. In default the motion shall stand dismissed. Costs to abide the outcome of the appeal.

Dated and delivered at Nyeri this 23rd day of April 2010.

J. K. SERGON

JUDGE