



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**MISC. CASE NO. 177 OF 2010**

**ELDORET STEEL MILLS.....APPLICANT**

**VERSUS**

**DENIS OUKO NYANGECHEI .....RESPONDENT**

**RULING**

This is an application for extension of time within which to file an appeal and for stay of execution of the decree issued by the lower court. It is based on the grounds that once judgment was entered the applicant advised its insurers to handle the matter but the insurers declined liability and by the time this process was over time for filing an appeal was long gone.

A director of the applicant company swore the supporting affidavit and deponed that the delay in filing the appeal within the prescribed time was due to seeking out the insurers and that time should be extended and stay of execution granted so as not to render the intended appeal nugatory and that if the orders sought are granted the respondent will not suffer any prejudice. The deponent, attached various correspondence in his affidavit to explain the delay.

In his Replying Affidavit the respondent swore that the application is scandalous and devoid of truth and hence an abuse of the court process and it ought to fail. He swore further that the applicant knew that the accident the respondent was involved in was not covered yet the applicant dragged the insurance company into the matter merely to buy time. He saw the application as one without merit and prayed for it to be dismissed.

In brief submissions both counsel relied on their respective grounds and affidavits with counsel for the respondent adding that no security was offered or proposed.

The judgment of the court below was delivered on 19/2/2010 and costs were assessed on 23/4/2010. On 24/2/2010 the applicant wrote to its insurers about the judgment who wrote back to it on 29/4/2010 declining liability and hence the present application was filed on 21/5/2010/. The applicant's onus is to explain to the court's satisfaction that delay was not inordinate but was due to reasonable causes. In this case I accept the reasons given for the delay as being consultation with the applicant's insurer. If the respondent knew that the applicant was not insured as he alleged, then he did not give proof of that allegation to court and therefore that allegation without proof is of no evidentiary value. I accept the reasons given for the delay. The delay was not inordinate and no prejudice is occasioned to the respondent who will still have his chance at the hearing of the appeal. I find no reasons why the applicant should be shut out of his statutory right of appeal.

As to stay of execution I note that the respondent's financial status was not disclosed to court and hence the court is not in a position to know whether the respondent would be in a position to refund the decretal sum, were the appeal to be successful. As regards security, I order that the applicant shall furnish a Bank guarantee for the entire decretal sum within 21 days of today. The appeal will similarly be filed within the same 21 days. In default of any one of the above two conditions, the stay herein granted will automatically lapse and the respondent will be at liberty to execute. Costs will abide the appeal. As agreed between both counsel, this outcome binds application HCCC. MISC. NO. 179/2010.

It is so ordered.

**DATED SIGNED AND DELIVERED AT ELDORET THIS 30<sup>TH</sup> DAY OF DECEMBER, 2010.**

**P.M. MWILU**

**JUDGE**

**In the presence of;**

Absent - Advocate for Applicant

Mr. Chanzu holding brief for Nyambegera - Advocate for Respondent

Tabith - Court Clerk

**P.M. MWILU**

**JUDGE**