

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Appeal 177 of 2007

SHALIMAR FLOWERS LIMITED.....APPELLANT

VERSUS

GEORGE OURO NYAUMA.....RESPONDENT

RULING

Before me is an application by way of Chamber Summons brought under Order XXI R 22 (1) Order XLI R V of the Civil Procedure Rules and Section 3A and 63 of the Civil Procedure Act seeking orders (i) that the firm of Nyachoti and Company Advocates be granted leave to come on record and act for the applicant; that there be stay of execution of the judgment of lower court Naivasha SPMCC No. 1079 of 2004 and that extension of time be allowed within which to file a Memorandum of Appeal and that the Memorandum of Appeal annexed herein be deemed duly file upon payment of requisite court fees.

Prayer 2 of the Chamber Summons was allowed by Khamoni J on 23rd April 2007 and the firm of Nyachoti & Co. Advocates duly came on record.

What remains for this court's consideration is extension of time within which to file appeal and stay of the lower court's judgment delivered on 31st January 2007 in Naivasha SPMCC No. 1079 of 2004.

Mr. Mwanyala counsel for the applicant submitted that the delay was only for 11 days. Judgment was delivered on 31st January 2007 and this application was filed on 13th March 2007 and that this is not inordinate delay. Mr. Mariaria counsel for the respondent in opposing the application submitted that the delay of 11 days was inordinate and no reasons are offered for the delay. Counsel further submitted that the intended appeal is not arguable and no loss is demonstrated if stay is not granted.

Order XLIX Rule 5 gives me jurisdiction to enlarge time to file appeal on application provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application unless the court orders otherwise. The delay of 11 days cannot be said to be inordinate. Prayer 4 of the Chamber Summons dated is allowed.

The applicant prays that the Memorandum of Appeal annexed thereto be deemed as only duly filed upon payment of the requisite court fees. But a close perusal of the record shows that no certificate copy of the order appealed against is filed with the Memorandum of Appeal.

The applicant is given 7 days within which to file the order appealed against and the time within which to pay the requisite court fees.

It is further ordered that stay of execution be granted on condition that the appellant deposits the whole of the decretal sum in an interest earning account to be opened in the joint names of counsel in a bank to be agreed upon.

Those are the orders of this court.

Delivered and dated at Nairobi this 3rd day of March 2008.

J. L. A. OSIEMO

JUDGE