

REPUBLIC OF KENYA

HIGH COURT AT MOMBASA

CIVIL APPEAL 47 OF 2007

JOSEPH KAMAU MWANGI

PACT KENYA (MOMBASA)APPELLANT

VERSUS

BANICE DEBORA KERUBO OMUNDO.....RESPONDENT

(Arising from R.M.'s C.C.Case No. 3428 of 2005 at the Resident Magistrate's court at Mombasa).

R U L I N G

The appellants herein, Joseph Kamau Mwangi and Pact Kenya (Mombasa) took a motion in which they prayed for leave to have the memorandum of appeal filed on 29th March 2007 to be deemed to have been filed out of time with leave of court. Mr. J.S. Kaburu, learned advocate for Banice Debora Kerubo Omundo, the Respondent herein strenuously opposed the motion by relying on the replying affidavit sworn by Banice Debora Kerubo.

The main ground argued by Mr. Kinyua for the applicant is to the effect that the appellant was not aware of the delivery of the judgment until 3/3/07. This ground appears not to be seriously contested by Mr. Kaburu. It is clear that under Section 79G of the Civil Procedure Act this court has a wide discretion to grant leave extending time to file an appeal out of time so long as one gives good reasons. I think the fact that notice of entry of Judgement was given on 3/3/2007 as opposed to 23/2/07 is a good reason to enable this court extend time. The delay to file appeal within time is not inordinate nor inexcusable. Consequently I grant the prayer for leave in terms of prayer 1 of the motion. As to whether or not to grant the prayer for stay pending appeal, I think the jurisdiction of this court has not been properly invoked under order XLI rule 4 of the Civil Procedure Rules. Consequently I will not grant the prayer gratuitously. The same is refused because it was not properly sought.

Those are the orders of the court.

Dated and delivered at Mombasa this 26th day of July 2007.

J.K. SERGON

J U D G E

In open court in the presence of Mr. Omondi h/b for Kinyua and Mr. Ouma h/b for Kaburu for Respondent.