



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

Misc Civ Appli 479 of 2006

WILSON K. KANYINGIAPPLICANT

V E R S U S

1. ALICE WANGARI

2. JOHN KURIA MUHIARESPONDENTS

R U L I N G

The main prayer of the application by notice of motion dated 21st June, 2006 is for leave to lodge appeal out of time against the decree of the lower court (Kiambu PMCC No. 217 of 2004) passed on 30th January, 2006. By that decree the Respondents were awarded general damages of KShs. 895,000/00 on behalf of the estate of one GEORGE MUHIA MWIHAKI. Following an order herein, KShs. 724,607/05 towards the decretal sum was deposited in a joint account in the names of the advocates for the parties pending disposal of the present application.

It is pleaded for the Applicant that the delay in filing the appeal occurred due to internal consultations within the Applicant's insurers and their external advocates, and also due to negotiations with a view to settlement which have since broken down. For the Respondents it is pleaded that there were never any negotiations between the parties.

I have read both the supporting and replying affidavits. I have also considered the submissions of the learned counsels appearing, including the authorities cited. I note that the intended appeal will be against the quantum of general damages awarded only, the main complaint being in respect of the multiplier of 20 years used by the lower court. I also note that the Applicant's insurers would be happy to pay general damages of KShs. 600,000/00.

I am of the view that justice will be served by allowing the Applicant to appeal and the Respondents to enjoy the fruits of their judgment to the extent of KShs. 600,000/00 that the Applicant's insurers were prepared to pay. I will therefore order as follows:-

1. The Applicant may lodge his memorandum of appeal within fourteen (14) days from delivery of this ruling.
2. Out of the monies now held in the joint account in the names of the parties' advocates shall be paid forthwith the sum of KShs. 600,000/00 to the Respondents through their advocates on record. The rest of

the funds shall continue to be held in the joint account pending disposal of the intended appeal or the order of the court.

3. Costs of this application shall be in the intended appeal. If no appeal is ultimately filed, the costs shall go to the Respondents.

There will be orders accordingly.

DATED AT NAIROBI THS 4TH DAY OF DECEMBER, 2007

H. P. G. WAWERU

J U D G E

DELIVERED THIS 7TH DAY OF DECEMBER, 2007