



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

Misc Civ Appli 87 of 2006

JOHN MWANGI KIAMA.....
.....APPLICANT

V E R S U S

STEPHEN WAWERU.....
RESPONDENT

R U L I N G

1. The Applicant herein was the Defendant in Nanyuki SRMCC No. 72/2005 and on 8.4.2006 Judgment in the sum of Ksh.315,000/- was entered against him in a claim arising from a road traffic accident. By the Application dated 6.6.2006 brought under the provisions of s.63(e) and s.79G of the Civil Procedure Act, the said Applicant, John Mwangi Kiama seeks orders of stay of execution of the decree until the Application is heard and determined and also orders that time be enlarged for him to file his Appeal out of time.
2. To my mind, the prayer for stay of execution was meant to stop execution while the Application was pending so that once it was heard and interim orders granted to the effect that the status quo be maintained, that prayer became superfluous and I will take no time in discussing arguments made on it.
3. The substantive prayer is the one for extension of time to file the intended Appeal and the Applicant in explaining delay states that:
 - (i) Judgment in the subordinate court was supposed to have been delivered on 29.3.2006 but was deferred by the trial magistrate to 8.4.2006.
 - (ii) When delivered on 8.4.2006, one Mr. Wanjohi Advocate appeared to hold brief for the Advocates for the Appellant, and duly informed them of the substance of the judgment.
 - (iii) On 12.4.2006, six (6) days after the Judgment, M/s Mithega and Co. Advocates wrote to him and gave a break-down of the final amount awarded to the Respondent in damages and advising that an Appeal ought to be filed to challenge certain parts of that judgment.
 - (iv) He only received that letter which was sent to his work place at the District Commissioners Office, Nanyuki, on 30.5.2006 and the instant Application was filed on 7.6.2006, a week later.
4. I have heard both advocates appearing and in my view I did not hear any serious reason why an

Applicant who has explained why his Appeal could not be filed in time and who has given cogent reasons for the delay should have the doors of justice closed in his face. The delay is in any event excusable because the instant Application was filed less than 1 ½ months after judgment and 7 days after receipt of the letter from the Applicant's lawyers. That delay, with good reason, cannot be inordinate.

5. I shall allow prayer 3 of the Application dated 6.6.2006 and order the Applicant to file his Appeal within 14 days of today's date.

6. During submissions I gathered that both advocates addressed their minds to the question of stay of execution pending appeal but as I said earlier, the prayer for stay of execution was superfluous as worded and there being no Appeal already filed, the stay of execution pending Appeal is equally superfluous and premature. If parties cannot agree on appropriate conditions for that stay of execution to be granted, let the Applicant file his Appeal and seek stay of execution within that Appeal.

7. In the event, I shall grant prayer 3 of the Application dated 6.6.2005, dismiss prayer 2 thereof and order that costs should abide the Appeal.

8. Orders accordingly.

Dated, signed and delivered in open court at Meru this 27TH day of September 2006

ISAAC LENAOLA

JUDGE

In the presence of

Mr. Kosgey Advocate for the Applicant

Mr. Muriuki Advocate for the Respondent

ISAAC LENAOLA

JUDGE