



REPUBLIC OF KENYA



**Malonza v Muthama (Civil Miscellaneous E005 of 2023)
[2024] KEHC 17155 (KLR) (2 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 17155 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL MISCELLANEOUS E005 OF 2023**

TM MATHEKA, J

MAY 2, 2024

ABEDNGO MWANGANGI MALONZA VS AMOS MUTINDA MUTHAMA

BETWEEN

ABEDNGO MWANGANGI MALONZA APPLICANT

AND

AMOS MUTINDA MUTHAMA RESPONDENT

RULING

1. The issue for determination in this matter is whether the applicant has established the parameters required for leave to file an appeal out of time.
2. From the Notice of Motion filed on 09/02/2023, the judgment of the subordinate court in Makueni MCCC E021/2022 was delivered on 15/11/2022 where the learned trial court found in favour of the plaintiff - at 100% liability against the defendant and award general damages of Kshs.250,000/= to the plaintiff.
3. The applicant/appellant filed this application seeking leave under section 3A, 79G and 95 of the *Civil Procedure Act*, Order 22, Rule 22, Order 42 Rule 4, 6, 7 Order 50 Rule 6 order 51 Rule 1 and 3 of Civil Procedure Rule.
4. The applicant further seeks that if leave is granted the applicant be granted stay of execution of the subordinate court's judgment pending the hearing and determination on the intended appeal.
5. The grounds for the application are contained on the grounds on the face of the application and according to the application, supporting affidavit of Joseph Mutuku Ndavi. However, there is no affidavit sworn by Joseph Mutuku Ndavi .The supporting affidavit is sworn by one Abednego Mwangangi Malonza, sworn on 24/1/2023.



6. The application is opposed vide the affidavit of Faith Mutio Mutuku sworn on 2/3/2023 to the effect that the judgment of the trial court delivered on 15/11/2022 was for a total sum of Kshs.350,384/96 and that the applicant had not established sufficient cause for the the orders sought , and that the delay had not been explained.
7. Parties filed submissions through their respective advocates – which I have considered.
8. The issues for determination is whether the applicant has fulfilled the requirements for the an application for leave to file appeal out of time; and for stay of execution pending appeal .
9. The applicant must of necessity first establish the necessary grounds for leave before the issue of stay can be addressed.
10. From the application, the supporting affidavit and the submissions, the applicant has not addressed the issue of leave to file the appeal out of time either in the application or in the submissions. The applicant has addressed only the issue of stay of execution pending appeal.
11. The respondent in his submission addressed the issue of leave at length.
12. What emerges from the authorities cited is that inordinate delay in filing an appeal depends on the circumstances and in each case an explanation for the delay is required to determine whether the applicant had good reason not to act within the required timelines. In this case the applicant makes the application for leave but gives no explanation at all for the delay. In the circumstance, no explanation is before the court for determination as to whether the delay was inordinate or not.
13. The issue of stay pending the intended appeal depended on this one – there being no explanation for delay, the application is not merited and is dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED ON E-FILE ON 2ND MAY 2024

SIGNED BY: LADY JUSTICE MATHEKA, TERESIA MUMBUA

THE JUDICIARY OF KENYA.

MAKUENI HIGH COURT

HIGH COURT DIV

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