



Mwongera v LPM (Suing thro mother and next friend MK) (Miscellaneous Civil Application E041 of 2024) [2024] KEHC 5551 (KLR) (2 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5551 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E041 OF 2024**

TW CHERERE, J

MAY 2, 2024

BETWEEN

BENEDICT MURINGI MWONGERA APPLICANT

AND

LPM (SUING THRO MOTHER AND NEXT FRIEND MK) RESPONDENT

RULING

1. The notice of motion dated 16th June, 2023 arises from the judgment (copy annexed) in Meru SCCC/ E092/2023 which was delivered on 23rd January, 2024 for KES. 664,000/- in favour of the Respondent as against the Applicant.
2. Applicant seeks stay of execution of the judgment and leave to appeal out of time. The motion is supported by an affidavit sworn by Benedict Muringi Mwongera (Applicant) on 08th March, 2024. The motion is premised on the grounds among others that the Respondent has filed a declaratory suit against the Applicant's insurer' Applicant intends to appeal and that his insurer is ready and willing to provide security.
3. LPM (Respondent) opposed the application vide a replying affidavit by the Respondents on 14th March, 2024 in she faults the Applicant for filing this application only after she applied to execute the judgment.

Analysis and Determination

4. I have considered the notice of motion in the light of affidavits on record and the authority cited by the Respondent and the issue for determination is whether Applicant has made out a case for leave to appeal out of time and stay of execution of judgment delivered on 23rd January, 2024.
5. The instant application was filed on 12th March, 2024 about 3 months after delivery of the impugned judgment.



6. Under Section 79G of *Civil Procedure Act*, an appeal from a subordinate court to the high court should be filed within a period of 30 days from the date of the decree or order appealed against provided that an appeal shall be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.
7. Having approached about 3 months after the impugned judgment was delivered, the onus is on the Applicant to demonstrate that the delay was reasonable, justified and that the Respondent will not suffer any prejudice if the order is not granted.
8. The principles that govern the exercise of discretion in an application for extension of time are well known. In *Githuaka v Nduriri* [2004] 2 KLR at page 68 and in the oft-cited case of *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* Civil Application No. Nai. 255 of 1997 [1999] 2 EA 231 which was a decision of the Court of Appeal in which the judge stated as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general, the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted”.

9. In *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, the Court of Appeal stated that:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

10. In this matter, the Applicant has not offered any explanation for the delay of close to three months and it appears to me that the Applicant has woken up from slumber only after Respondent filed the declaratory suit namely Meru CMCC E025 of 2024
11. The foregoing notwithstanding, driving a party from the seat of justice without giving them a chance to ventilate their case is a draconian measure which should be exercised cautiously.
12. Consequently, I find that no prejudice will be occasioned if the orders sought are granted on the following terms:
 1. Applicant is granted leave to appeal the judgment in Meru SCCC/E092/2023 out of time
 2. The Applicant shall file and serve the appeal within 45 days from today’s date
 3. There shall be stay of execution of judgment and decree in Meru SCCC/E092/2023 upon the Applicant depositing KES. 500,000/- (five hundred thousand) with the court, within 14 days from today’s date
 4. Costs shall abide the outcome of the intended appeal

DELIVERED AT MERU THIS 02ND DAY OF MAY 2024.

WAMAE. T. W. CHERERE

JUDGE

Appearance



Court Assistant - Morris Kinoti

For Applicant - Mr. Adagala for Kimondo Gachoka & Co. Advocates

For Respondent - Mr. Mwendwa for TMM Advocates

