



Ngeera v MM (Suing as the Father and Next Friend to PKN) (Miscellaneous Civil Application E018 of 2024) [2024] KEHC 7575 (KLR) (20 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7575 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E018 OF 2024
EM MURIITHI, J
JUNE 20, 2024**

BETWEEN

GITUMA KAROMBORI NGEERA APPLICANT

AND

MM (SUING AS THE FATHER AND NEXT FRIEND TO PKN) . RESPONDENT

RULING

1. By a Notice of Motion under certificate of urgency dated 27th March, 2024, brought under Order 22 Rule 22, Order 42 Rules 4 and 6, Order 51 Rules 1 and 3 of the Civil Procedure Rules, Sections 3, 3A and 95 of the Civil Procedure Act and all other enabling provisions of the law, the Applicant seeks:
 1. Spent
 2. That this Honourable Court be pleased to grant leave to the Intended Appellant/Applicant to appeal out of time against the Judgment of the Honourable Trial adjudicator, in Meru Scc No. E354 of 2023 being Martin Muroria (Suing as the Father and Next Friend to *Patrick Kimathi Nkonge v Gituma Karombori Ngeera* delivered on 12th January, 2024.
 3. Spent
 4. That this Honourable Court be pleased to find that the Small Claims court lacked the requisite jurisdiction to handle the suit being Meru Scc No. E354 of 2023 being Martin Muroria (Suing as the Father and Next Friend to *Patrick Kimathi Nkonge v Gituma Karombori Ngeera* as the same was a claim for personal injury which the Small Claims Court is bereft of jurisdiction.
 5. That this Honourable Court be pleased to direct the Applicant/Intended Appellant to deposit a bank guarantee for the entire decretal sum in court.
 6. Spent



7. That the costs of this Application abide the outcome of the Appeal.
2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of Gituma Karombori Ngeera, the Applicant herein sworn on even date. He contends that the Respondent filed this suit against him following a road traffic accident which occurred on or about 24/8/2023. He is dissatisfied with the judgment of the trial court awarding the Respondent Ksh.962,743 together with costs and interest which he intends to appeal against. As a result of the above, the Respondent, through his advocate extracted the decree, took out a Notice to Show Cause and threatened to have him committed to civil jail. It was discovered that the costs had been erroneously assessed, and another decree was subsequently issued. He is fearful that the Respondent might proceed with execution and have him committed to civil jail, which will occasion him grievous irreparable loss, harm and prejudice. He has an arguable appeal with high chances of success, which will be rendered nugatory unless the application, which has been made without unreasonable delay is allowed. He is apprehensive that if the decretal amount, which is quite substantial, is paid to the Respondent, he may deal with it in a manner prejudicial to him, and the same might not be recoverable in the event of a successful appeal. His insurer is ready, able and willing to deposit a Bank Guarantee from a reputable bank and/or deposit half the decretal sum in court as a condition for stay pending the hearing and determination of the intended appeal.
3. The Respondent, Martin Muroria (Suing as the Father and Next Friend to Patrick Kimathi Nkonge) opposed the application *vide* his replying affidavit sworn on 15/4/2024. He terms the application as frivolous, vexatious and an abuse of the court process, which should be dismissed with costs. He avers that the Applicant filed Meru CMCC No. 19/2024 seeking stay of execution pending determination of the declaratory suit. The application is brought forth by the Applicant's insurer and he will be seeking to cross examine the Applicant on the strength of the affidavit in support of his application. Stay orders are moot as there has been no execution whatsoever in Meru SCC No. E354/2023, the subject of these proceedings. No reasons have been advanced to show why the Applicant failed to file the appeal within time. The issue of jurisdiction is an afterthought as it was not raised in the trial court, and parties are bound by their pleadings.
4. The parties were directed to file written submissions, but at the time of writing this ruling, none had been filed.

Determination

5. Before delving into the merits of the application, an issue of jurisdiction of the Small Claims Court to handle personal injury matters has been raised. The Adjudicator herein is also a Resident Magistrate. Therefore, pursuant to the provisions of the section 7 of the *Magistrates' Court Act*, that court, sitting as a Resident Magistrates' Court had the requisite jurisdiction to entertain the personal injury claim.
6. The singular issue for determination is whether leave to appeal out of time be issued.

Leave to appeal out of time

7. The principles for consideration on an application for extension of time to appeal out of time are that, the power is discretionary but the applicants must prove to the satisfaction of the court that the delay is not inordinate, reasons for delay are plausible, that the appeal is arguable and not frivolous and that the respondent will not be unduly prejudiced by the order being made. See *Nicholas Kiptoo Korir Arap Salt v Independent Electoral & Boundaries Commission & 7 others* (2014) eKLR.



8. The impugned judgment was delivered on 12/1/2024 while the instant application was filed on 27/3/2024. The Applicant urges that he delayed in filing the appeal because he was still prosecuting the application seeking to have the erroneous decree set aside. This court accepts the reason proffered for that delay as plausible and satisfactory.
9. From the Respondent's response to the application, no prejudice has been disclosed.
10. For the reasons set out above, this court deems it fit to enlarge time to lodge the appeal out of time.

Orders

11. Accordingly, for the reasons set out above, this Court allows the application dated 27/3/2024 in the following terms: -
 1. The Applicant is granted leave to appeal out of time against the judgment and decree in Meru SCC No. E354 of 2023 being Martin Muroria (Suing as the Father and Next Friend to *Patrick Kimathi Nkonge v Gituma Karombori Ngeera* delivered on 12th January, 2024.
 2. As a condition for the Stay of execution of the judgment/decree herein earlier granted, the Applicant shall pay to the Respondent Ksh. 300,000 and deposit with the Court a Bank Guarantee for the payment of the balance of Ksh.662,743 within 30 days from the date hereof.
 3. The Record of Appeal to be filed within 60 days from the date hereof.
 4. In the event of default of any of the aforementioned conditions, the stay hereby granted shall lapse and be of no effect.
 5. The costs of this application shall abide the outcome of the appeal.

Order accordingly.

DATED AND DELIVERED ON THIS 20TH DAY OF JUNE 2024.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Kipnetich for Applicant.

Mr. Mwendwa for the Respondent.

