



Gikunga v Madison Insurance Company Ltd (Miscellaneous Application E781 of 2023) [2024] KEHC 8791 (KLR) (Civ) (15 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8791 (KLR)

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

CIVIL

MISCELLANEOUS APPLICATION E781 OF 2023

JN MULWA, J

JULY 15, 2024

BETWEEN

THOMAS GIKUNGA APPLICANT

AND

MADISON INSURANCE COMPANY LTD RESPONDENT

RULING

1. By the Motion dated 28/08/2023, the applicant seeks orders for
 - a. Leave to file appeal out of time and
 - b. To set aside and/or stay execution of the decree from the judgment of the subordinate court delivered on 7/07/2023 pending hearing and determination of the intended appeal.
2. In the supporting affidavit sworn by the Applicant's Advocate Vivian Wanjiru on 28/08/2023, the reasons for the delay in not filing appeal within the statutory period have been explained.
In opposing the motion, the Respondent's Legal Officer Moses Barasa swore the Replying Affidavit on 30/10/2023.
3. I have considered the Supporting and Opposing Affidavits and the judgment of the trial court.
The delay in filing the Appeal is 20 days. Further, I find no decree capable of being executed as the judgment subject of the intended appeal had no orders capable of being executed save for the award on costs.
4. The reasons stated by the applicant that it could not obtain the proceedings in good time is an administrative issue, but it is common knowledge that on the recent past to date, getting proceedings



from the small claims court is not easy for lack of sufficient staff to undertake typing thereof. Twenty days are not in my view too long having been explained.

5. Consequently, the applicant is granted leave to file his appeal out of time. The Memorandum of Appeal shall be filed and exchanged within 7 days of this ruling and the Record of Appeal to be filed within 60 days.
6. The prayer for stay of execution of the judgment is denied, there being no decree capable of being stayed.
7. The court finds it appropriate to order that each party bears its own costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF JULY, 2024.

JANET MULWA

JUDGE

