



GOO v BAB (Civil Appeal E244 of 2021) [2023] KEHC 1929 (KLR) (10 March 2023) (Ruling)

Neutral citation: [2023] KEHC 1929 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E244 OF 2021
MM KASANGO, J
MARCH 10, 2023**

BETWEEN

GOO APPELLANT

AND

BAB RESPONDENT

(Being an appeal from the judgment of the Chief Magistrates Court at Thika dated 18th January, 2021)

RULING

1. The appeal hereof relates to a children’s matter filed before the Thika Chief Magistrate’s Court. That trial court delivered its judgment on January 18, 2021. The appellant, the father of the children, being aggrieved by the said judgment filed this appeal.
2. The appellant filed a notice of motion dated December 14, 2021 seeking interlocutory orders for stay of the judgment of the trial court.
3. The application is opposed by the respondent, the mother of the children.

Analysis And Determination

4. I have considered the appellant’s affidavit in support of the application and the respondent’s replying affidavit. Having done so, my view is that the application is unmerited and is additionally incompetent.
5. The application is unmerited because the appellant fails to explain why he delayed in seeking stay of execution of that judgment for close to 12 months. The trial court’s judgment was delivered on January 18, 2021. The appellant’s interlocutory application was filed on December 15, 2021. There is no explanation for that delay. Order 42 Rule 6 of the *Civil Procedure Rules* provides the conditions that must be satisfied before stay of execution pending the determination of an appeal is granted. One of the conditions is that an applicant seeking stay of execution of a judgment is that the stay be sought



without unreasonable delay. Failure for the appellant to explain the delay in seeking stay of execution will lead to dismissal of the application.

6. The application is incompetent because it is based on the foundation of an appeal that was filed out of time without leave of the court. Section 79G of the *Civil Procedure Act* provides that an appeal to this Court from a subordinate court shall be filed within a period of thirty days from the date of the decree or order appealed against. In this case, the period to appeal began to run from January 19, 2021. This appeal ought to have been filed within thirty days from that date. It however was only filed on December 15, 2021. It does not take much calculation to note that when this appeal was filed the thirty days provided under Section 79G had long expired. Since the application under consideration seeks stay of execution of the trial court's judgment pending determination of this appeal and because the appeal before court is not valid having been filed out of the thirty days period, the application for stay of execution is incompetent. On that additional ground the application fails.
7. When this matter was last before court the parties indicated that there were two applications for consideration by this Court. The first they indicated was dated June 16, 2021 while the second is the one that I have discussed hereinabove. The one stated to be dated June 16, 2021 is not available in this file. It is therefore not the subject of this Ruling.

Conclusion

8. The application dated December 14, 2021 for the reasons set out above is dismissed and the costs thereof shall be in the cause.
9. At the reading of this Ruling, the appellant shall be given a date on which he shall show cause why the appeal should not be struck out for having been filed out of time without leave.

RULING DATED AND DELIVERED AT KIAMBU THIS 10TH DAY OF MARCH, 2023.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Mourice/Julie

Appellant in person : - Gordon Odede

Instructed by Norman Otieno Advocates for the Respondent : N/A

COURT

RULING *delivered virtually.*

MARY KASANGO

JUDGE

