



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. E723 OF 2021

EAGLE GROUP INTERNATIONAL LIMITED.....1ST APPELLANT

AGBEKO ERIC.....2ND APPELLANT

MENSAH BAFOUR KYEI.....3RD APPELLANT

-VERSUS-

HADIJA CHERUTO HAMISI.....RESPONDENT

RULING

1) The appellant herein took out the motion dated 2/11/2021 in which they sought for the following orders:

i. THAT this application be certified urgent, and service thereof be dispensed with in the first instance.

ii. THAT this honourable court be pleased to grant leave to extend time limited for filing of the memorandum of appeal herein.

iii. THAT the honourable court be pleased to issue a temporary stay of execution of the orders of the Chief Magistrates Court at Milimani Commercial Division in Civil Case no. 3637 of 2019 issued on 16th September 2021 pending the final hearing and determination of this application.

iv. THAT the honourable court be pleased to issue a temporary stay of execution of the orders of the Chief Magistrates Court at Milimani Commercial Division in Civil Case no. 3637 of 2019 issued on 16th September 2021 pending the hearing and determination of the appeal to this court

v. THAT corollary to the foregoing, the memorandum of appeal filed by the appellant be deemed as properly and duly filed thus part of the record.

vi. THAT the costs of this application abide the outcome of the intended appeal.

vii. THAT the honourable court be pleased to issue any other orders it may deem fit and just in the circumstances of the case.

2) The appellants filed the affidavit of Agbeko Eric in support of the motion. The application was served upon the respondent's advocates but the same never attracted any response, therefore this court permitted the appellants/applicants to prosecute the same ex parte

3) It is the submission of the appellants/applicants that their case before the trial court was closed in their absentia as well as their counsels. The applicants also aver that they made concerted efforts in vain to obtain typed proceedings and a certified copy of the ruling to enable them lodge their appeal. The appellants further aver that due to the Judiciary e filing challenges, they were unable to upload the memorandum of appeal hence the delay to file the appeal on time.

4) Having considered the grounds put forward in support of the application and having further taken into account the fact that the respondent did not controvert the appellants' averments arguments, I find the motion to be with merits. The same is allowed thus giving rise to issuance of the following orders:

i. Time to file an appeal out of time is extended by 10 days.

ii. An order for stay of execution of the orders issued on 16th September 2021 by the trial court is granted pending appeal.

iii. Costs of the application to abide by the outcome of the appeal.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 4TH DAY OF FEBRUARY, 2022.

.....

J. K. SERGON

JUDGE

In the presence of:

.....for the Appellant

.....for the Respondent