

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

MISC. CIVIL CASE NO. E004 OF 2021

THE GUARDIAN COACH LTD.....APPLICANT

VERSUS

POB & LKM (Minor suing as personal & Legal Representative of the estate of

DBO (DECEASED).....RESPONDENTS

RULING

This ruling pertains to the Notice of Motion dated 23rd February 2021 filed herein on 22nd February 2021. On the main the application seeks leave to appeal the decision/order of the trial court which refused the applicant leave to file further witness statements. The decision/order intended to be appealed was delivered on 27th October 2020 and leave is sought to appeal out of time. Counsel for the applicant proposed and Counsel for the respondents did not oppose that the said application may be canvassed by way of written submissions. He however opposed that the proceedings in the lower court should be stayed pending hearing and determination of the application. I agree with him that such a stay would scuttle the proceedings in the lower court. It is unfathomable that Counsel for the applicant would wait until three days to the hearing date to bring this application. The application is clearly made in bad faith the ruling of the court having been delivered well over three months ago. To allow the application for stay of the proceedings would be tantamount to aiding a party whose sole intention is to abuse the court process. This abuse is also demonstrated by the fact that whereas the order to serve the application was made on 24th February 2021 the service in this supposedly very urgent application was not effected until very late on Sunday 29th February 2021. This despite there being rules allowing service of documents electronically. The applicant is an indolent party who is not deserving of an order for stay of the proceedings in the lower court. In the premises there shall be no order for stay.

As for the application for leave to appeal out of time Counsel shall file written submissions within seven days and come for mention on 11th March 2021 for this court to give them a date for ruling. Costs shall abide the ruling in the main application. It is so ordered.

RULING SIGNED, DATED AND DELIVERED ELECTRONICALLY AT 2.15PM ON THIS 1ST DAY OF MARCH 2021.

E. N. MAINA

JUDGE