

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISC APPLICATION NO. 15 OF 2021

VIJAY KUMAR GARG T/A KINDO LABORATORIES ENTERPRISES LTDAPPLICANT

VERSUS

ANITA CHEMTAI KAOS, WILSON NAMUNYU OMARI (Suing as joint

Administrators of the Estate of REUBEN KEMBOI NAMUNYU 1ST RESPONDENT

LEXMAN D HIRANI T/A JSAN ENTERPRISES.....2ND RESPONDENT

RULING

The judgment by the trial Magistrate 's court was delivered on 23rd March 2021. The Applicant filed the present application on 31st May 2021. This court is of the considered view that the delay is not inordinate. The court is convinced by the reasons put forward by the Applicant for the delay in filing the appeal on time. This court has seen the draft Memorandum of Appeal. It is satisfied that the issues raised therein are arguable and deserve to be ventilated on appeal. It will serve the interest of justice for the issues raised therein to be heard and determined on its merits.

In the premises therefore the Applicant's application to be granted extension of time to file appeal out of time is allowed. The applicant shall file and serve the Memorandum of appeal within seven (7) days of today's date. As for the application for stay of execution of the decree and judgment of the trial Magistrate, the same shall await the formal filing of the appeal. This court agrees with the Respondent that such orders cannot be granted since there is no pending appeal. The Respondent shall have the costs of this application which the court assesses at Kshs 15,000/-. Pending the filing of a formal application for stay in the Appeal, this court grants the Applicant temporary orders of stay of execution of the Judgment and decree for period of fourteen (14) days.

It is so ordered. File is ordered closed.

DATED AT KITALE THIS 3RD DAY OF JUNE, 2021.

L. KIMARU

JUDGE