



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVIL CASE MISCELLANEOUS APPLICATION NO. 192 OF 2020

KENYA WOMEN MICROFINANCE

BANK LIMITED.....INTENDED APPELLANT/APPLICANT

VS

ANNA WAIRIMU MATHENGE.....RESPONDENT

(An application for leave to file an appeal out of time and for stay of execution of the judgment of Thika Chief Magistrates Court No. CMCC No. 1126 of 2017 dated 11th August, 2020)

RULING

1. **KENYA WOMEN MICROFINANCE BANK LIMITED** (hereinafter the bank) has moved this Court by Notice of Motion dated 6th October, 2020. The Bank seeks stay of execution of CM Thika Civil Case No. 1126 of 2017, pending hearing and determination of the intended appeal and for leave to file an appeal out of time.

2. The application was opposed by **ANNA WAIRIMU MATHENGE** the respondent.

ANALYSIS

3. I have considered the application and the submissions filed by the parties herein. I am of the view that this Court should first determine whether leave to file an appeal out of time is merited for if indeed it is not merited there will be no basis of granting a stay of execution.

4. **Section 79G** of the Civil Procedure Act provides as follows:-

“79G. Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.

5. The Thika C.M. Court judgment was delivered on 11th August, 2020. It follows that an appeal, as provided under **Section 79G**, should have been filed within 30 days after the date of that judgment. It was not filed nor has it been filed to-date, hence why the bank seeks leave to file the appeal out of time. **Section 79G** requires a party who seeks leave to file an appeal out of time to satisfy the court that he/she has good and sufficient cause for not filing the appeal in time.

6. The respondent opposes this prayer for leave to file an appeal out of time on the ground that the Bank failed to show “good and sufficient cause” for not filing the appeal out of time.

7. The affidavit in support of the application was sworn by Bernard Kiprotich on behalf of the Bank, although he does not explain his relationship to the Bank.

8. In that affidavit, the deponent confirmed that the trial court’s judgment was delivered on 11th August, 2020. The paragraphs of that affidavit that are relevant to the prayer under consideration are as follows:-

“4. THAT the intended appellant/applicant upon seeking proper counsels is now of the reasoned opinion that the judgment is not grounded on the proper law and there is grave misinterpretation of facts and the law and has now resolved to appeal the said judgment.

9. THAT the intended appellant/applicant has requested for typed proceedings to enable it file the record of appeal but has not received the same (annexed and marked BK4 is a copy of the letter requesting typed proceedings)

11. THAT meanwhile, the time to file an appeal has run out and leave to file the appeal is now necessary.

12. THAT the intended appellant/applicant undertakes to lodge the intended appeal and record whereof expeditiously within such time as this Honourable court may order upon requisite leave being granted.

13. THAT the intended appellant/applicant has moved diligently and expeditiously in bringing this application before upon receiving proper counsel by its advocates”

9. Although the letter marked as BK4 is exhibited, it is instructive to note it does not have the Thika C.M. Court stamp. It cannot therefore be relied upon by this Court to grant leave to file an appeal out of time. Indeed, there is no sufficient cause, as can be seen in the above paragraphs for this Court to grant the prayers sought. That prayer fails. Having failed there is no basis of considering the other prayers in the application.

DISPOSITION

10. The notice of motion dated 6th October, 2020 fails because the Bank failed to explain the delay in filing the appeal in time. Accordingly, that application is dismissed with costs.

RULING DATED AND DELIVERED AT KIAMBU THIS 1ST DAY OF JULY, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Ndege

For the Applicant: no appearance

For the Respondent : no appearance

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE