



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVIL CASE MISCELLANEOUS APPLICATION NO. E38 OF 2020

LETSHEGO KENYA LIMITED.....1ST APPLICANT

CHADOR AUCTIONEERS..... 2ND APPLICANT

VS

SAMUEL NYANJUI MBUGUA.....RESPONDENT

RULING

1. **LETSHEGO KENYA LIMITED** and **CHADOR AUCTIONEERS**, the applicants, have moved this Court by Notice of Motion application dated 15th December, 2020. They seek leave to file an appeal from the trial court's judgment out of time and stay of execution of the trial court's judgment.

2. I have considered the parties affidavit evidence and the submissions.

ANALYSIS

3. In the first instance, I shall consider whether there is merit in the application for the prayer for leave to file an appeal out of time. **Section 79G** of the Civil Procedure Act provides:-

“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.

4. The applicants, by the affidavit of *Winnierohi Wafula* stated that the judgment of **Limuru SPMCC No. 19 of 2018** was to be delivered on notice. This information was relayed by the Limuru Court Registry on 27th August, 2020. This was at a time when the courts' proceedings were interrupted by the COVID-19 Pandemic. The deponent further stated that the applicants' advocate was not informed of the date of delivery of that judgment and came to know it had been delivered when the respondent served the decree on them. That when the applicants came to know of the judgment, the time line, 30 days set out in **Section 79G** had lapsed.

5. In consideration of this prayer, I am well guided by the case ***MAURENE AGUTU V. PAUL MBOYA (2019) eKLR*** as follows:-

“8. The parameters for exercise of court's discretion were concisely laid out in the case of *MWANGI V KENYA AIRWAYS LTD [2003] KLR* where the Court of Appeal expressed itself thus:-

‘It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted’.

6. The length of delay in this case is of two months. That delay in my view is not inordinate. The reason given by applicants for the delay is reasonable. The judgment was delivered during the time the court's operations were affected by COVID-19 pandemic and there is no

evidence the applicants were informed of its delivery.

7. In my view, the applicants have shown and satisfied this Court there was good and sufficient cause for not filing the appeal in time. Leave will therefore be granted.

8. On whether the execution of the trial court's judgment should be stayed and if so on what terms will be determined by what the parties submitted before court. Both parties are in agreement that if stay is granted the decretal sum should be deposited in joint interest earning account. That in my view is reasonable and is in keeping with the provisions of **Order 432 Rule 6(2)** of the Civil Procedure Rules.

DISPOSITION

9. I therefore grant the following orders:-

(a) Leave is granted to the applicant to file an appeal out of time against the judgment of Limuru SPMCC No. 19 of 2016. Such an appeal shall be filed within 15 days from today.

(b) There shall be stay of execution of Limuru SPMCC No. 19 of 2016 on condition that the applicants do provide within 30 days the decretal sum for deposit into the joint interest earning Bank accounts of counsels of both parties.

(c) The costs of the Notice of Motion dated 15th December, 2020 shall abide with the outcome of the intended appeal.

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

MARY KASANGO

JUDGE

Coram:

Court Assistant : Ndege

For the Applicant: Mukele

For the Respondent : Mr. Ngigi

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE