



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 330 OF 2012

PATRICK NYOIKE.....PLAINTIFF/RESPONDENT

VERSUS

LINUS GITAHU.....1ST DEFENDANT/APPLICANT

NATION MEDIA GROUP LIMITED.....2ND DEFENDANT/APPLICANT

RULING

1. The application dated 25/3/2021 seeks orders that:

The Honourable Court be pleased to extend the time limit for the complying with the Orders issued on the 11th day of February, 2021.

2. The application is based on the grounds set out in the application and the affidavit in support. Judgment was delivered herein on 29/5/2020. The Applicants' application for stay of execution was allowed on 11/2/2021 on condition that the decretal sum be deposited in a joint interest earning account of the counsels or in court within 30 days. It is averred that the parties started negotiations on the bank to deposit the decretal sum and agreed on the Plaintiff's choice of Family Bank.

3. That the account opening forms were filled in and forwarded to Family Bank but the process took long. That Family Bank wanted a court order to be supplied before the opening of the account but by then the time within which to comply with the orders herein had lapsed. It is further stated that the instant application has been made without unreasonable delay and that the Applicants stand to suffer substantial loss if the orders sought are not allowed.

4. The application is opposed. It is stated in the replying affidavit that the application is brought in bad faith and is aimed at causing delay in the realization of the Judgment. That the application at hand has been filed after inordinate delay. That no decree has been extracted or the Party and Party Bill of Costs taxed and that there is therefore no impending execution. That the Defendants have not demonstrated what prejudice they stand to suffer if the decretal sum is paid as the Plaintiff is able to refund the decretal sum in the unlikely event that the Appeal is successful.

5. I have considered the application, the response to the same and the oral submissions made by the respective counsels for the parties.

6. On enlargement of time, the principles applicable were set out by the Supreme Court of Kenya in the **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR** as follows:

“This being the first case in which this court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a court should consider in exercise of such discretion:

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;

2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;

3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;

4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court.

5. Whether there will be any prejudice suffered by the respondents if the extension is granted;

6. Whether the application has been brought without undue delay; and

7. Whether in certain cases, like election petitions, public interest should be consideration for extending time.”

7. The explanation given by the Defendants for the delay in opening the bank account is satisfactory. The said facts are not disputed by the Plaintiff. This court is therefore persuaded to exercise its discretion in favor of the Defendants. The application is allowed on condition that the decretal sum is deposited in a joint interest earning bank account of the Advocates for the parties or in court within 30 days from the date hereof.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 1ST DAY OF JULY, 2021

B.THURANIRA JADEN

JUDGE