

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

MISC. APPLICATION CASE NO 12 & 13 OF 2021

JAMES KIMUYU NGERURO.....1ST APPLICANT

WILSON KIPCHOGE CHUMBA.....2ND APPLICANT

VERSUS

JAMES BOIT SIMATWA (suing as personal representative of the Estate of

KISO VIOLET MACHESO and next friend of

RUTH CHEPKWEMOI BOIT).....RESPONDENT

RULING

The Applicants seek for orders of this court to extend time for them to lodge appeal out of time. The reason for the delay in lodging the appeal in time is because the Applicants claim that the Insurance Company failed to take action when it was informed of the outcome of the case. The Applicant only became aware of the inaction on the part of the Insurance Company when their property was attached. It is for that reason that the Applicants crave for this court's exercise of discretion to allow him to file appeal out of time. The Applicants state that his appeal has high chances of success in light of the fact that the quantum of damages that was awarded to the Respondent was excessive in the circumstances. This court cannot delve into the merits of the appeal but suffice for this court to state that the Applicants have made a case for this court to exercise its discretion in their favour.

Although the Respondent vehemently opposed the application, this court is of the considered view that the Applicant should be given a chance to ventilate his appeal on merit. The Respondent shall not be prejudiced since this court shall make orders that will ensure that his rights are also taken into account.

In the Premises therefore, the Applicants' application seeking extension of time to file appeal out of time is hereby allowed. The Applicants shall file and serve the Memorandum of Appeal within fourteen (14) days of today's date.

So that the interest of the Respondent is secured, the Applicants in Misc. Application No. 13/2021 are ordered to pay to the Respondent the sum of Kshs 750,000/- within thirty (30) days of today's day and in respect of Misc. Application No 12/2021 to pay the sum of Kshs 750,000/- within thirty (30) days of today's date.

Stay of execution is granted pending the hearing of the appeal subject to the payment of the above sums.

The Applicant shall pay the auctioneers costs, to be agreed or taxed. The attached Motor Vehicle to be released once auctioneer's charges are paid. In any event, the Respondent shall have the costs of the Application.

Dated, Signed and Delivered at Kitale on this 21st day of September 2021.

L. KIMARU

JUDGE