



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC CASE NO. 243 of 2017

ELIJAH MAINA KIMANI

(suing on behalf of LIGHT HOUSE OF GRACE MINISTRY....1ST PLAINTIFF

GERALD WAMBUA MAKAU.....2ND PLAINTIFF

VERSUS

JACOB MUYENDI WAMBUA.....1ST DEFENDANT

SUMAC MICROFINANCE BANK.....2ND DEFENDANT

RULING

1. In the Notice of Motion dated 4th August, 2020, the Plaintiffs have prayed for the following orders:

a) That the Honourable Court be pleased to extend time to file Notice of Appeal, Memorandum of Appeal and the Record of Appeal to the Court of Appeal out of time.

b) That the Honourable Court be pleased to stay execution of the Judgment and Decree of the Court delivered on 24th April, 2020 and/or any further proceedings in the matter pending hearing and determination of the intended Appeal to the Court of Appeal.

2. The Application is supported by the Affidavit of the Plaintiffs' advocate who has deponed that on 24th April, 2020, the Honourable Court delivered Judgment dismissing the Plaintiffs'/Applicants' suit with costs; that the Applicant being dissatisfied with the Judgment intends to appeal to the Court of Appeal against the whole of that Judgment out of time and that the Plaintiffs have an arguable appeal with high prospects of success.

3. It was deponed that the intended appeal raises arguable issues of law and fact that would be rendered nugatory if the stay orders are not granted; that the Judgment in this matter was to be delivered on 1st November, 2019 and that the judgment was not ready and the court advised that the same would be delivered on notice.

4. The Plaintiffs' counsel deponed that the said Judgment was delivered online on 24th April, 2020 in the absence of the Applicants' Advocates; that during this period, there was an outbreak of the Corona Virus Disease (**COVID-19**) pandemic and that following the Ministry of Health guidelines and directives on how to combat the pandemic, on 16th March, 2020, the Honourable the Chief Justice made further directives and down scaled court services.

5. According to the Plaintiffs' advocate, for the safety and health of their staff members, they were compelled to close down their offices beginning 2nd of April, 2020 and only resumed on 8th July, 2020 and that they only came to learn of the Judgment of the court on or about the month of July, 2020 when it was too late and time to file the Notice of Appeal had lapsed.

6. Counsel deponed that due to the pandemic, he was not able to get in touch with his client for proper instructions on the intended Appeal and that the delay in filing the Notice of Appeal was not deliberate but was occasioned due to the foregoing unique and unpredictable circumstances.

7. The Plaintiff's counsel deponed that the 2nd Defendant has since filed his Bill of costs which is due for taxation against the

Plaintiff/Applicant hence the need for stay orders. The 2nd Defendant opposed the Application on the grounds that the judgment debtor has not provided sufficient grounds for failure to file an appeal within time. The Plaintiff and the 2nd Defendant filed submissions which I have considered.

8. It is not in dispute that this court delivered its Judgment online on 24th April, 2020 in the absence of the Plaintiff's/Applicants' Advocates. It is also not in dispute that as at the time of the delivery of the Judgment, there was an outbreak of the Corona Virus Disease (COVID-19) pandemic and the Ministry of Health had issued guidelines and directives on how to combat the pandemic, including encouraging people to work from their homes.

9. As correctly submitted by the Plaintiff's advocate, on 16th March, 2020, the Honourable the Chief Justice made further directives and down scaled court services. Indeed, litigants and advocates were restricted from visiting the courts.

10. The Plaintiffs' advocate has deponed that for the safety and health of their staff members, they were compelled to close down their offices beginning 2nd of April, 2020 and only resumed on 8th July, 2020 and that they only came to learn of the Judgment of the court on or about the month of July, 2020 when it was too late and the time to file the Notice of Appeal had lapsed.

11. **Section 7 of the Appellate Jurisdiction Act** mandates this court to extend time for giving notice of intention to appeal from a Judgment of the High Court or for making an application for leave to appeal notwithstanding that the time for giving such notice may have already expired.

12. The Plaintiff's advocate deposition that he had closed his offices due to the COVID 19 pandemic is acceptable. Indeed, the courts country wide were not in session as at the time the Judgment of this court was delivered on line due to the pandemic. That being the case, the Plaintiff's advocate could not have been aware of the date of the delivery of the Judgment of this court.

13. The reasons given for the extension of time for filing of the Notice of Appeal are plausible. I shall therefore allow that prayer. However, I decline to issue an order staying the execution of the Judgment because the court did not issue any positive order capable of execution. This court having dismissed the suit, the Judgment is negative in nature, and therefore incapable of being executed.

14. For those reasons, I partially allow the Application dated 4th August, 2020 as follows:

- a) **Leave is hereby given to the Plaintiff to file the Notice of Appeal out time.**
- b) **The Notice of Appeal to be filed within 14 days of the date of this Ruling.**
- c) **Each party to bear his own costs.**

DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS 1ST DAY OF OCTOBER, 2021.

O. A. ANGOTE

JUDGE

In the presence of;

.....for the Plaintiffs

.....for the Defendants

John Okumu – Court Assistant