



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

MISCELLANEOUS CIVIL APPLICATION NO. 7 OF 2020

BENARD OCHIENG ANYUMBA.....1ST APPLICANT

ESTHER C. KENDUIYO.....2ND APPLICANT

JOHANA K. LANGAT.....3RD APPLICANT

VERSUS

NELLY CHERONO TOWETT.....RESPONDENT

RULING

1. The application in the BOMET MISC. Application No. 7, 8 and 9 of 2020 are seeking leave and extension of time to appeal out of time in SOTIK SRMCC No. 180, 181 and 182 of 2018 respectively.

2. The applications are based on the grounds on the face of it and supported by the Affidavit of Geoffrey Okello Wesonga, an Advocate in the firm of MOSE MOSE and Milimo Advocates who were on record for BRITAM GENERAL INSURANCE COMPANY (K) Ltd acting for the Respondents.

3. It is deposed in the supporting Affidavits which are divided in the three Applications that the Respondents were not notified of the delivery of Judgment and that the Respondents stamped upon the Judgments on 29/5/2020 and noted that they had been delivered on 23/4/2020.

4. The applicants are now seeking leave to appeal out of time.

5. The Respondents also filed identical Replying Affidavits opposing the Applications.

6. I have condemned the applications seeking leave to appeal out of time together with the Affidavits in support of the same and also the Replying Affidavits.

7. I find that it is not in dispute that the Judgment was delivered in the absence of the Applicants.

8. The Applicants were entitled to be served with a 10 days notice of delivery of Judgment since they were absent.

9. I find that there is a plausible reason why the Appeal was not filed within the stipulated time.

10. I accordingly grant stay of execution and leave to file the appeal of time on the following conditions:

(1) THAT the intended appeal be filed within 30 days of this date.

(2) THAT half the decretal sum be deposited in an interest earning account jointly held by the Advocates for both parties

(3) THAT the said account be opened within 30 days of this date.

(4) This rule bonds Misc. No. 7, 8 and 9 of 2020.

Delivered in the open court in Bomet this 1st day of July 2020.

Mr. Mugumya holding brief for Wesonga for the Applicants.

No appearance for the Respondent.

A. ONGERI

JUDGE

1/7/2020