



REPUBLIC KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISC.CIVIL APPLICATION NO.15 OF 2020

KENYA POWER AND LIGHTING CO.LTD & ANOTHER.....APPLICANT

VERSES

LIVINGSTONE MBUGUA.....RESPONDENT

RULING

1. By their application dated **10th June 2020**, the Applicants have prayed that they be granted leave of this court to appeal out of time against the lower courts judgement delivered on the 12th day of February, 2020 in Kitale Civil case No.50 of 2013. They have also prayed for stay of execution pending the said intended appeal.
2. The application is based on the grounds thereof as well as the supporting affidavit of **Ruth Mbalelo** the Legal Officer of the Applicant's Insurance Company sworn on the same date. The substance of the reasons advanced by the said officer are that they were unable to appeal within the requisite time as their board was unable to meet and deliberate over the matter due to the Covid 19 pandemic pursuant to the government directives that there should be maintained what is now called social distancing.
3. That as a result of the said directives the board met on the 19th May 2020 and advised their Counsel to appeal against the lower court judgement. It was not therefore the making of the Applicant that they failed to comply with the statutory requirement of appealing within the stipulated period. She went on to state that they are willing to comply with the terms laid down by this honourable court to be fulfilled pending the said appeal.
4. The Respondent by his replying affidavit filed on the 19th June 2020 has opposed the application on the grounds that the Applicants cannot be heard to argue that they were not aware of the expiration of the appeal window since by 27th February 2020, they did record consent on costs and therefore the issue of Covid 19 does not lie. He further stated that in any event the announcement by the government to scale down after the corona virus pandemic came in mid-March 2020 when they should have filed the appeal.
5. He argued that he has waited for a long time to enjoy the fruits of the judgement noting that all his house was razed down by fire courtesy of the Applicant's negligence. He urges this court to dismiss the application.
6. Parties were ordered to file written submissions but apparently it appears the Respondent did not. Nonetheless the court has perused the Applicant's submission which essentially restates what is contained in the supporting affidavits.
7. The grounds for consideration whether to allow the application of this nature are provided by Order 42 rule 6 of the Civil Procedure Rules which in a nutshell includes the fact the application ought to be made expeditiously; whether the intended appeal is arguable and; whether the Appellant/Respondent shall suffer any prejudice.
8. The above grounds are at times superseded by the discretion of the court which may impose any demands before allowing the application and granting any orders.
9. Looking at the reasons advanced by the Applicant, it is not farfetched for it to rely on the reason of the corona pandemic in not failing to adhere to the period of filing the appeal. It is in the public domain that the government directed all parties, institutions and individuals to scale down on their operations. The same is still active to date. The Applicants reason is therefore reasonable in the circumstances taking into totality the prevailing governments directives as a result of the corona pathogens.
10. The court shall in the premises allow the application but must at the same breath take care of the Respondent's interest noting that he ought to begin enjoying the fruit of the judgement. The Respondent has demonstrated that he was a civil servant and propertied enough and thus a man of substance not straw. The Applicant on the other hand has submitted that it was ready to comply with any conditions demanded by this court.

11. Balancing the interest of the parties herein and without venturing whether the intended appeal will be arguable or not, as that would be decided at an appropriate time this court makes the following orders;

(a) The Applicant is hereby granted to file its appeal within the next 14 days from the date herein.

(b) The Applicant shall within 30 days from the date herein pay the sum of Kshs. 1 Million to the Respondent together with the assessed costs if any at the trial court.

(c) The balance of the decretal amount totalling Kshs. 2 Million shall be deposited in a joint interest earning account of both Counsels for the Applicant and the Respondent within the next 30 days from the date herein.

Dated, signed and delivered in open court at Kitale this 16th day of July, 2020.

H. K. CHEMITEI

JUDGE

16/7/2020