



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISC. CIVIL APPL. NO. 688 OF 2019**

**DAVID WACHIRA.....APPELLANT**

**-VERSUS-**

**JOSPHINE KAMBUA KATIWA & FESTUS MUNYOKI KATIWA**

**(Suing as the administrators of the estate of the late MWANIKI KATIWA).....RESPONDENT**

**RULING**

The application dated 7<sup>th</sup> August, 2020 seeks the following orders: -

- 1. THAT time within which to comply with Orders issued on 29<sup>th</sup> May, 2020 be enlarged and/or that the Applicant be granted further 14 days or such other time as the court may specify to comply with the orders granted.**
- 2. THAT the costs of this Application be provided for.**

The application is supported by the affidavit of Mr. Mandela Chege sworn on 7<sup>th</sup> August, 2020. The respondent filed a replying affidavit sworn by Mr. Edward Oonge on 30<sup>th</sup> September, 2020.

Mr. Kabita, Counsel for the applicant urged the court to extend time to comply with earlier orders granted by Justice Thuranira. There was delay in preparing the cheques as ordered by the court. The cheques were signed on 22<sup>nd</sup> July, 2020 and it was already late.

Mr. Muriungi opposed the application. It was submitted that the applicant failed to comply with the court orders. Justice Thuranira observed in her ruling that the cause of the delay in filing the appeal were not satisfactory but allowed the application in the interest of justice. The applicant has not explained why he had to wait for the orders to lapse before seeking extension.

The applicant filed an application dated 29<sup>th</sup> October, 2019 seeking extension of time to file an appeal as well as stay of execution of the judgment and decree in Milimani CMCC No. 4433 of 2011. Justice Thuranira, in her ruling delivered on 29<sup>th</sup> May, 2020 granted the orders on condition that the decretal sum be deposited either in court or in joint account of respective counsels within thirty (30) days.

The applicant contends that there was delay in processing the cheques in compliance with the ruling. The cheques were ready by 22<sup>nd</sup> July, 2020. The ruling was delivered on 29<sup>th</sup> May, 2020 and time to comply lapsed by 30<sup>th</sup> June, 2020.

In view of the fact that the applicant has made effort and managed to have the cheques ready and available, I do find that the delay of about three weeks to comply with the earlier orders is not unreasonable. This is not a party who decided to ignore the court orders. There will be no prejudice to the respondent apart from the delay in enjoying the fruits of her judgment. The respondent is however assured that the decretal sum will be readily available upon the conclusion of the appeal.

I do find that the application dated 7<sup>th</sup> August, 2020 is merited and is hereby granted as prayed in the following terms;

- i. The applicant to file and serve the memorandum of Appeal within fourteen (14) days hereof.**
- ii. The decretal sum to be deposited either in a joint account or in court within fourteen (14) days hereof.**

**iii. In the event of non-compliance with orders (i) and (ii) herein the respondent shall be at liberty to execute.**

**iv. Costs of the application shall follow the outcome of the appeal.**

**Delivered and Dated at Nairobi this 8<sup>th</sup> day of December, 2020**

.....

**S. CHITEMBWE**

**JUDGE**