



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MISC. APPLICATION NO. 8 OF 2018

RICHARD GICHANGI KARIMI.....APPLICANT

V E R S U S

CATHERINE WAWIRA MURIUKI.....RESPONDENT

RULING

1. The applicant has filed an application dated 12/02/2018 seeking that the Honourable court be pleased to enlarge time within which he may file an appeal against the judgment/decreed delivered on 22/09/2017 vide **CMCC No. 101 of 2015** and the appeal be admitted out of the statutory time. In addition, the Court be pleased to stay the execution upon issuing reasonable orders as to security of costs.

2. The application is based on the ground that the appellant was the defendant in **CMCC No. 101 of 2015** in a claim for compensation and special damages. The Honourable magistrate entered judgment against him for payment of Kshs.100,000/= in general damages and Kshs.7,400/= for special damages with costs of the suit. He was aggrieved by the said decree and applied for certified copies of proceedings, judgment and decree for purposes of lodging an appeal on 27/09/2017. That it was not until 30/01/2018 that the same was availed and he was issued with a certificate of delay. That the respondent has proceeded to have her costs assessed with a view of executing which will prejudice him.

3. In response, the respondent stated that the typed proceedings are not a requisite for one to file memorandum of appeal and there is no reasonable excuse why the applicant failed to file his appeal within 30 days from the date of judgment. That the application has been prompted by service of bill of costs on the applicant's advocates and when it came up for taxation, he did not indicate any intentions to file an appeal. That he has not established he has an arguable appeal.

Filing an appeal out of time

Section 79G of the Civil Procedure Act deals with the time for filing appeals from subordinate courts and states:

Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.

4. This court exercises discretion to allow an application for extension of time. A party seeking extension of time must show a good reason for the delay in filing the appeal.

In **Paul Musili Wambua v Attorney General & 2 others [2015] eKLR**

The Court of Appeal in considering an application for extension of time and leave to file Notice of Appeal out of time stated the following;

....it is now well settled by a long line of authorities by this Court that the decision of whether or not to extend the time for filing an appeal the Judge exercises unfettered discretion. However, in the exercise of such discretion, the court must act upon reason(s) not based on whims or caprice. In general the matters which a court takes into account in deciding whether to grant an extension of time are; the length of the delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted.

a) Length of delay and reasons thereof

5. Judgment was delivered on 22/09/2017 and he applied for certified copies of proceedings and judgment via letter dated 27/09/2017. The proceedings were availed on 30/01/2018 and he was issued with a certificate of delay thereby confirming that the delay was occasioned by the Court in supplying the said documents. He has satisfied the court that he had a good and sufficient cause for the delay.

b) Chances of the appeal succeeding

Upon perusing a copy of the judgment, the trial court held that the respondent was bitten by a dog near the appellant's home and she went inside his home. The appellant was called whereupon he administered first aid and thereafter took her to hospital. The respondent was bitten by a brown dog and the appellant confirmed to have 2 brown dogs. The appeal is arguable. At this stage the court considers whether the applicant has arguable appeal for which the court should give a chance to prosecute.

6. In the circumstances of this case the delay to file the appeal was explained.

7. The appeal has raised various issues of law and facts. The appeal is arguable. The applicant has met the threshold for the grant of the orders. The application has merits. I order as follows:-

(i) The application is allowed.

(ii) There be stay of execution pending the hearing and determination of the appeal.

(iii) The applicant to provide security, be depositing Kshs 50,000/- in court or a security of an equivalent value.

(iv) The appeal be filed within 30 days from today.

(v) Costs be in the cause.

Dated at Kerugoya this 15th day of February, 2019.

L. W. GITARI

JUDGE