

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 95 OF 2011

MNK (a minor suing thro' her father next of friend PKM)...PLAINTIFF/RESPONDENT

VERSUS

JOSEPH MWAURA.....DEFENDANT/APPLICANT

RULING

1. The application dated 31st July, 2018 seeks orders that the Hon court reviews, and or varies the orders issued on 24th May, 2018 directing the deposit of the decretal sum in a joint interest earning account of the parties advocates and consequently substitute with an order allowing the judgment debtor/defendant to deposit a security of a sum equivalent to or in excess of the decretal sum.
2. It is stated in the grounds and the affidavit in support of the application that the Applicant is experiencing financial challenges but has real property and can deposit the title thereof as security herein as he's unable to raise the decretal sum.
3. The application is opposed. It is stated in the replying affidavit that the Applicant's earlier application for enlargement of time within which to appeal was allowed on 24th May, 2018 on condition that the decretal sum was deposited within 30 days. That the 30 days lapsed on 24th June, 2018 and therefore ceased to have any force of law and cannot be reviewed. That in the affidavit in support of the earlier application for enlargement of time the Appellant had deponed that he was capable and willing to abide by the orders given by the courts. It is further contended that there is no evidence to demonstrate the existence or value of the property offered as security.
4. I have considered this application, the response to the same and the submissions filed by the counsel for the respective parties.
5. The order for the deposit of that decretal sum were made on 24th May, 2018. The application at hand was made on 1st August, 2018 after the lapse of the 30 days within which the deposit ought to have been made. There is no explanation for the delay. There is no prayer for the extension of the said period of 30 days.
6. A perusal of the court record reflects that in the application dated 2nd March, 2017 the Applicant sought orders for extension of time within which to appeal and for stay of execution. The Applicant's explanation for the delay was based on inadvertence on the part of his advocate. The court however exercised discretion to give the appeal a chance but on condition that the decretal sum was deposited within 30 days. It seems the Applicant went to sleep and has come back long after the expiry of 30 days to seek a review of the order dated 24th May, 2018. In the application dated 2nd March, 2017, the Applicant had offered security for the due performance of the decree. At that stage, the Applicant did not raise any issues of financial challenges.
7. The security offered and valuation report have not been exhibited herein for this courts consideration.
8. With the foregoing, this court agrees with the Respondent's counsel that the application is undeserving of the exercise of this court's discretion. Consequently, I find no merits in the application and dismiss the same with costs.

Date, signed and delivered at Nairobi this 21st day of Nov., 2019

B. THURANIRA JADEN

JUDGE