



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HC MISC APPL. CC. NO. 62 OF 2018

DANIEL KYALO MASUU.....APPELLANT

VERSUS

GEOFFREY MUINDI MASUU.....RESPONDENT

RULING

1. By Notice of Motion dated 10/04/2018, the Applicant seeks orders for:-

- **Extension and leave to file appeal out of time.**
- **Stay of extension of decree in Tawa SRM CC 127 OF 2017 pending hearing and determination for the intended appeal.**

2. The Application is anchored on Section 3A, 79G, 95 CPR Order 22 Rule 23, 42 Rule 6, Order 5C Rule 6, Order 51 Rule 1&3 CPR 2010.

3. The Notice of Motion is based on grounds that; the Judgment was delivered on 20/02/2018 and days of filing Appeal lapsed by time Application herein was filed thus need to seek leave to appeal out of time.

4. The Applicant says he will suffer substantial loss and damage if orders sought are denied as the decretal amount if paid may never be recovered thus appeal be rendered nugatory.

5. The appeal is arguable and thus with high chances of success.

6. The Application is supported by Affidavit of Pauline Waruhiu sworn on 09/04/2018.

7. The deponent states that the judgment was delivered on 20/02/2018 in absence of their advocate and by the time the insurance got the decree time of filing appeal had lapsed.

8. He depones that if the awarded amount is paid there is no guarantee same would be recovered as Respondent does show means of refund in event appeal succeeds.

9. The draft memo of appeal impugns the award of Kshs. 500,000/= as been inordinately high.

10. The Respondent opposes application and has filed a Replying Affidavit which he swore on 17/04/2018. He submits that the conditions for stay under Order 42 Rule 6 have not been satisfied.

11. The judgment on liability was agreed at 90%:10% in favour of the Respondent thus leaving the task of Quantum to be determined by the court.

12. The total award with costs is Kshs. 733,493/=.

13. The Respondent urges court to order half amount to be paid to the Respondent and the balance be deposited in interest earning account.

14. I have noted on paragraph 8 of the Supporting Affidavit of Pauline Waruhia, there is offer to deposit money in court or in a joint interest earning account in parties advocate names.

15. The Respondent has countered the same by proposing the deposit of ½ of decretal amount in a joint account of both parties advocate and

the other half to be paid to the Respondent.

16. Having the above concession and taking to account that the only issue the appeal is the Quantum, I find it academic to discuss the issues of delay, substantial loss but opt to deal with the security.

17. The court has not seen the Judgment to understand the nature of the injuries *vis a vis* the award of Kshs. 500,000/= impugned. The same figure will either remain same, increase or decrease after the appeal is disposed.

18. I find it fair to strike balance and order thus;

i. Kshs. 300,000/= be paid to the Respondent within 30 days and Kshs. 200,000/= be put in interest earning account in the joint names of the parties Advocate within 30 days.

ii. The appeal shall be filed and served within 14 days.

iii. In default of (i) above execution to issue.

SIGNED DATED AND DELIVERED THIS 16TH DAY OF MAY, 2018 IN OPEN COURT.

C. KARIUKI

JUDGE

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