

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

MISC CIVIL APPLICATION NO. 8 OF 2018.

KENNEDY KIFUNYA KALAHA.....APPLICANT

VERSUS.

BEATRICE BUGUTSA MAKATI

JACK WANJALA KHISA (Suing as the administrators of the

Estate of **BRIAN NAMASAKE WAKHISI** – Deceased.....**RESPONDENTS**

RULING.

This is application dated 12.3.2018 seeking mainly 2 prayers (a) Stay of execution of the decree in Bungoma CMCC No. 559/2016 pending the filing, hearing and determination of the appeal. (b) Leave to appeal out of time against the Judgment in Bungoma CMCC 559/2016.

The grounds are that the applicant received instructions late from the Insurance Company and only did so on 9.3.2018; that the delay is excusable and that the appeal has high chances of success. The Respondent in his response submits that no sufficient grounds have been advanced to grant the prayers sought; that the Respondent has a right to enjoy the fruits of his judgment and finally that the appeal does not have any chances of success.

I have carefully considered the application and submissions of the Counsel. I also note that liability in the lower court was by consent and the only issue in that appeal would be on quantum. I consequently make the following orders;

- 1. That leave to appeal out of time by the applicant is hereby granted.*
- 2. Applicant to file appeal within 30 days from today's date.*
- 3. That the Appellant do deposit all the decretal amount of Kshs.1,343,772/= in an interest earning account in the names of both Counsel for applicant and Respondent within 30 days.*
- 4. Upon fulfilment of No. 3 above, there be stay of execution until the appeal is heard and finalized. In default execute the process.*
- 5. Costs be in the cause.*

Dated and Delivered at Bungoma on this 7th day of November, 2018.

S.N. RIECHI

JUDGE