



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT BUNGOMA.**

**CIVIL MISC. APPLICATION NO. 78 of 2018.**

**TASHA ENTERPRISES LTD.....PLAINTIFF**

**VERSUS**

**BEN KHAEMBA BARASA.....DEFENDANT**

**RULING.**

The application Tasha Enterprises(K) Ltd filed this application dated 11<sup>th</sup> June 2018 against the Respondent Ben Khaemba Barasa seeking;

*1) Leave to file appeal out of time.*

*2) Stay of execution of the Judgment and decree in **Webuye CC. 187/2017.***

The grounds of the application are on the face of the application. The application is supported by this affidavit of Lucas Ndung the Office Administrator of the Applicant Company. He depones that the Respondent sued the applicant in Webuye CC. No. 187/2017 claiming damages for personal injuries sustained in a road traffic Accident. That Judgment was entered against the appellant for Kshs.773,900/=. They were not aware of the Judgment until a proclamation was made on their property. He now prays for leave to file appeal out time and is willing to deposit the decretal amount in Court or a Joint account in the names of the Counsels on record. Mr. Mukisu for the Respondent opposes the application and submits the application offends Order 9 rule 9 as this matter is filed in a Misc. Application and not on the main file.

I have considered the application and submissions. The applicant has explained why it was unable to file appeal within stipulated time basically because of lack of communication with counsel on record. In my view they have explained the delay in filing appeal. I grant this leave to file an appeal within 30 days from today date.

On the issue of stay of execution of decree, I grant the stay for 30 days on condition that the applicant/defendant do deposit within 30 days the sum of Kshs.773,900/= in the Joint interest earning account in the names of Advocate on record in Webuye CC. No. 187/17. In default of such deposit, execution to proceed.

**Dated and Delivered at Bungoma on this 8<sup>th</sup> day of November, 2018.**

**S.N. RIECHI**

**JUDGE.**