

REUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. APPLICATION 218 OF 2018

BRASS AND ALLIED WORKS LTD.....APPLICANT

VERSUS

CHARLES NDEGWA WAGURA.....1ST RESPONDENT

JOHN KANINA.....2ND RESPONDENT

JOSEPH MUKUNA.....3RD RESPONDENT

RULING

There is a judgment of the lower court in favour of the 1st respondent herein delivered on 8th November, 2018. The applicant herein was the defendant in the lower court. Following that judgment the applicant filed this application dated 4th April, 2018 for stay of execution and leave to file an appeal out of time. The applicant cited Sections 1A,1B,3B and 79G of the Civil Procedure Act and Order 50 of the Civil Procedure Rules. Reasons have been given on the face of the application alongside a supporting affidavit sworn by a director of the applicant.

The application is opposed and there is a replying affidavit sworn by the 1st respondent herein. Both parties have filed written submissions. I have looked at the provisions of law cited by the applicant, the submissions of both parties and the cited authorities. The delay in filing of the application has been sufficiently explained by the applicant.

The main reason is that the judgment was delivered in the absence of both parties without notice thereof. It has also been explained that there is apprehension the 1st respondent may not be in a position to repay the decretal sum if stay is not granted as it is alleged he may lack means to do so. That would amount to substantial loss.

The applicant is prepared to deposit the decretal sum in an interest earning account in the names of both counsel. That I believe is sufficient security required to ensure that any decree that may be passed against the applicant will be met if the appeal does not succeed. Any prejudice that may arise shall have been taken care of by that proposal.

Accordingly, I allow the application in terms of prayers No. 3 and 4 provided that the applicant shall cause the entire sum to be deposited in an interest earning account in the joint names of both advocates on record for the parties. Leave is also granted to lodge the appeal out of time. The deposit of the decretal sum and the filing of the record of appeal shall be effected within 30 days from the date of this ruling. The costs shall be on appeal.

Dated, signed and delivered at Nairobi this 11th day of December, 2018.

A. MBOGHOLI MSAGHA

JUDGE