

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL MISC. APPL. NO. 593 OF 2016

FRANCIS KIMANI 1ST APPELLANT/APPLICANT

MELZEDEK KENYATTA 2ND APPELLANT/APPLICANT

JAMES OMOKE AMENTA 3RD APPELLANT/APPLICANT

- V E R S U S -

MWENZE MOKI.....RESPONDENT

RULING

1. The appellants herein, namely Francis Kimani, Melzedek Kenyatta and James Omoke Amenta the 1st, 2nd and 3rd appellants took out the motion dated 21.11.2016 in which they sought for *inter alia*:

i. An order for stay of execution pending appeal.

ii. An order for leave to file an appeal out of time against the decision of Hon. Obura learned principal Magistrate delivered on 14.10.2016 vide Nairobi C.M.C.C. no. 315 of 2015, Milimani Commercial Court.

iii. Costs of the motion.

2) The motion is supported by the affidavit of Maureem Andeje. When served, Mwenze Moko, the respondent herein, filed grounds of opposition to oppose the motion. When the motion came up for interpartes hearing, this court gave directions to have the motion disposed of by written submissions. At the time of writing this ruling, the respondent was the only party who had filed his written submissions.

3) I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the motion. I have also considered the written submissions. It is the submission of the appellants/applicants that they instructed the firm of M/s Kairu & MCourt to appeal against the judgement delivered vide Milimani C.M.C.C. no. 315 of 2015 on 14.10.2016 but due to an inadvertent mistake the aforesaid firm failed to do so within the statutory period. The respondent opposed the motion arguing that no good reasons have been given to explain why the appeal was not filed within time.

4) The main reason advanced in support of the motion is that, due to inadvertent mistake, the appeal was not filed within time. I have carefully considered the material placed before this court and there is no explanation as to the cause of the delay to enable this court exercise its discretion to extend time to appeal. Having failed to provide any plausible reason to convince this court to extend time and grant an order for stay, I find the motion dated 21/11/2016 to be without merit. The same is dismissed with costs to the respondent.

Dated, Signed and Delivered in open court this 9th day of June, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent