

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISCELLANEOUS CASE NO. 7 OF 2016

JUBILEE INSURANCE COMPANY LTD..... PLAINTIFF

VERSUS

WALTER TONDO SOITA DEFENDANT

RULING

1. The application before me is dated the 25th of February, 2016 filed pursuant to Order 40 Rule 6 Order 50 Rule 6 of the Civil Procedure Rules 2010 Sections 3A and 79 (9) of the Civil Procedure Act.
2. Relevant now are prayers 3, 4, & 6 seeking for extension of time within which to file an appeal or in other words leave to file an appeal out of time, stay of execution and provision for costs.
3. The application is based on the grounds that; the applicant intends to lodge an appeal against the judgement of **Bungoma CMCC No. 832 of 2010**, the applicant informed its counsel vide an email for some reason was not received by counsel on the intention; that it is only on 24th of April, 2015 that both the applicant and counsel realized that there was lapse in this communication, delay is not inordinate, it is excusable and the appeal has a high chance of success.
4. The application was opposed through grounds of opposition and a replying affidavit of the respondent; where the respondent shows how the applicant was lax in prosecuting the defence case in the lower court, including seeking several adjournments, not calling any witnesses and failing to file submissions. It was further deposed that the appeal has no chance of succeeding; The applicant is a man of straw; and has not come to court with clean hands.
5. The appeal ought to have been filed on the 4th of January, 2016, the current application was filed on 25th of February, 2016. 1 month 20 days later the. Explanation is miscommunication between the applicant and its counsel. I have looked at the grounds of appeal and on the face of it the same raises issues that may be worth consideration by the court.
6. I do not find the period of 1 month and 20 days in the circumstances to be inordinate, I also find reasons given to be excusable.
7. The application in terms of prayer 3 & 2 therefore succeeds on the following terms
 - (a). Appeal be filed within the next 30 days subject to (b)
 - (b). The decretal amount be placed in an interest earning account in the names of current counsel on record for the parties within the next 30 days.
 - (c). Costs in the application to the respondent in any event

Delivered and Dated at Bungoma this 2nd day of June, 2016.

ALI-ARONI

JUDGE.