

REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

MISC. APPLICATION NO.32 OF 2015

JEREMIAH MUGAMBI APPLICANT

VRS

KAINGU WAREHI KALUME RESPONDENT

RULING

The application dated 20th July, 2015 is seeking extension of time so that he can file appeal out of time. It is supported by the applicant's affidavit of the same date. The respondent filed a replying affidavit sworn on 27th July, 2015. Parties agreed to file written submission but none were filed.

The explanation given in the supporting affidavit is that the judgment was to be delivered on 14th May, 2015 but it was not. It was to be delivered on notice but no such notice was received before a demand letter was received. On his part the respondent maintain that the intended appeal is frivolous and vexatious, that the application has been lodged with inordinate delay and he should be allowed to enjoy the fruits of litigation.

The record shows that judgment was delivered on 28th May, 2015. This application was filed on 21st July 2015. I do find that the application has not been filed with inordinate delay. The record shows that the respondent was awarded Ksh.90,000/- as general damages. The applicant's application only mentions an order of stay pending the hearing of the application. It is clear that even if the time to file appeal is enlarged, the respondent will be free to execute. This will necessitate the filing of another application for stay of execution.

Since the applicant is entitled to pursue an appeal, the court has to strike a balance between that right and the right of the respondent to enjoy the fruits of his judgment. I do allow the application for enlargement of time. The applicant to file his appeal within 14 days hereof. I do further order that the applicant deposits either in court or interest earning account of both advocates a total of Ksh.100,000/- (One Hundred Thousand Shillings Only) within forty five (45) days hereof. Costs shall follow the outcome of the appeal.

Dated, signed and delivered at Malindi this 5th day of October, 2015.

SAID J. CHITEMBWE

JUDGE