



REPUBLIC OF KENYA

High Court at Bungoma

Miscellaneous Civil Appeal 29 of 2012

SILVANUS IRUKANI.....APPLICANT

VRS

SECRETARY, B.O.G. MUSINGU HIGH SCHOOL.....RESPONDENT

RULING

The Application:

[1] The intended Appellant is the applicant herein. He applied to this court through a notice of motion dated 30/4/2012 for:

- a) A stay of execution of the decree and judgment in Bungoma CM CC No.13 of 2000 pending determination of his application for enlargement of time to file appeal out of time.
- b) Enlargement of time allowing him to file appeal out of time.

[2] The Applicant has grounded his said application on the following reasons:

- a) That his advocates M/s Lucy Nanzushi & Co. Advocates M/s Lucy Nanzushi & Co Advocates did not inform him of the delivery of judgment.
- b) That his wife was taken ill and eventually passed on during the time.
- c) That he also fell sick and was not able to visit his advocates offices for update of his case.
- d) That the intended Respondents will not suffer any prejudice if his application is allowed, and that they will be compensated by way of costs.
- e) That the delay in not filing the appeal was not intentional or inordinate.

The Applicant reinforced Respondent's Opposition:

[3] The Respondent has opposed the application for enlargement of time are majorly relied on the grounds of opposition filed on 29/6/2013 and submissions filed on 13/3/2013.

[4] The Respondent is of the view that, inspite of the unfortunate turn of events particularly the death of the Applicant's wife, the Applicant has not satisfactorily offered an explanation of the delay. Further the medical notes relate to a period much later after the delivery of judgments and there is no indication as to when madam Lucy Nanzushi informed him of the judgment. The Respondent seeks for dismissal of

the application.

COURT'S VIEW ON THE MATTER

[5] Extension of time to file an appeal is a discretionary relief. It is grantable by the court once it is satisfied that a reasonable explanation has been given for the delay. Extension of time will not therefore be granted as a matter of right or routine.

[6] I too sympathize with the situation that the Applicant found himself during the period in question. But that by itself is not enough in an application of this nature. The applicant ought to have demonstrated how that state of affairs prevented him from reaching his advocates M/s Nanzushi & Co. Advocates for updates on his case. He should have shown some efforts he made to find out the status of his case at the time. If that had been done, only that it did not elicit any response from the advocates, the situation would have been different. But nothing on record shows the Applicant was not dilatory, or was vigilant on his obligations as a client to demand for accountability and prompt updating of the status of his case. I am aware I am not trying a disciplinary cause against the advocate, which in any event, I will not have jurisdiction, and therefore I resist from making any comment on the duty of the advocate to her client.

[7] The burden of proof to offer a satisfactory explanation for the delay in filing an appeal, lies on the Applicant. I find that he has not offered any satisfactory explanation for the delay herein and decline to grant his request for extension of time. Accordingly, the application dated 30/4/2012 is dismissed with no orders as to costs.

Dated and delivered at Bungoma this 6th day of May, 2013.

F. GIKONYO

JUDGE

In the presence of:

Khisa CA

Situma for the Applicant

Madam Makhoha for Mukavale for the Respondent

F. GIKONYO

JUDGE