

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL NO. 131 OF 2012

(An appeal from the Judgment of the Principal Magistrate's Court at Molo (Mr. Soita, P.M.) dated 8th May, 2012 in CMCC No. 316 of 2010)

FRANCIS MAINA KAHURIA.....APPELLANT

VERSUS

LIVINGSTONE K. KINYANJUI.....RESPONDENT

RULING

In his Notice of Motion dated 26th March 2013 and filed on 27th March 2013 the Respondent sought orders to strike out the Appellant's Notice of Appeal dated 23rd July 2012 and filed on 24th July 2012 on the grounds *inter alia* that the appeal was filed out of time and without leave of court.

The Application was opposed by the Respondent who has deponed in his Replying Affidavit sworn on 21st May 2013 and filed on 23rd May 2013 that he has done all he could to secure the proceedings from Molo Law Courts, but has not got them yet. He attached to his Affidavit copies of correspondence addressed to Molo Law Courts. The Respondent also depones that he is keen to prosecute his appeal and he is willing to abide by any terms this court would impose to allow him prosecute his appeal.

It is a matter which this court takes judicial notice that typing of proceedings in courts is a challenge, and hence delays in lodgment of appeals.

In this case the Respondent has applied for and was granted a stay of execution upon a deposit of Shs 50,000/= which is half of the decretal sum Ksh 100,000/=. I will therefore not strike out the notice of appeal, but direct the Appellant/Respondent to deposit the balance of the decretal sum of shs 50,000/= into court.

I further direct that his Advocate or he himself files his Appeal within the next 120 days (*one hundred and twenty days*) and in default his Notice of Appeal will stand struck out from the end of that period.

The costs herein will abide the appeal.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 7th day of November, 2013

M.J. ANYARA EMUKULE

JUDGE