

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NUMBER 522 OF 2012

ALLOYS STEEL CASTING LIMITED. APPLICANT

VERSUS

SIMON IMWENE EPALAT. RESPONDENT

RULING

The application before the court is dated 18th September, 2012. It seeks leave to appeal out of time and if granted, a stay of execution pending the hearing and final determination of the intended appeal.

The lower court judgment or ruling was delivered on 24th July, 2012. It is not in dispute that both parties were not in court in attendance to the judgment delivery. The applicant asserts that neither party knew the date intended for the delivery of the judgment of the lower court. The Respondent, on the other hand, asserted that both parties were properly informed in court by the court which heard the suit, that judgment would be delivered on 24th July, 2012.

I have perused the supporting affidavit which should and was intended to explain the reason why there was delay or why both parties did not attend court on 24th July, 2012 to take the judgment. The affidavit carefully and conveniently avoided to explain the cause of delay to file an appeal. Even in court during the agitation of this application, the applicant avoided explaining the real cause of delay. This court accepts that Respondent's assertion that parties were properly informed of the date when the lower court judgment would be delivered but failed to attend court for reasons known to them.

This application was filed about two months after the judgment was delivered. It, however, in my opinion, appears to have been filed on second thought and with the probable intention to delay the Respondent from realizing its decree which, in any case, was in the process of being realized through execution. The impression created in the mind of the court is that, it was the proclamation issuance that awoke the appellant from slumber. It was upon the Applicant to persuade the court that it deserves a favourable exercise of courts discretion. It has failed in that respect.

I have carefully considered the application. I have come to the conclusion that this application for the reasons discussed above, has no merit and does not deserve a favourable exercise of court's discretion. It is hereby dismissed with costs. Orders accordingly.

Dated and delivered at Nairobi this 10th day of October, 2012.

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JUDGE