

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIVASHA**

**HIGH COURT CIVIL MISCELLANEOUS**

**APPLICATION NUMBER E140 OF 2024**

FELISTER BOSIBORI NJOROGE-----

APPELLANT

VERSUS

MIRIAM WANGUI MACHARIA-----1<sup>ST</sup>

RESPONDENT

WNGARI MUIRU-----2<sup>ND</sup>

RESPONDENT

MARY WANJIKU MUIRU-----3<sup>RD</sup>

RESPONDENT

**RULING**

1. By a notice of motion application dated 30<sup>th</sup> October 2024, the applicant cum intended appellant is seeking for the following orders:

*a) That the proposed appellant herein be granted leave to file her appeal out of time.*

*b) That this Honourable court be pleased to issue an order that it may deem just and expedient in the interest of justice.*

*c) That the costs of this application be provided for.*

2. The application is supported by the grounds on the face of it, and an affidavit sworn by the applicant, wherein she avers that a judgment was delivered in CMCC No. 131 of 2017 on 27<sup>th</sup> May 2024, and immediately thereafter she applied for certified copies of proceedings and judgment.
3. However, she was not supplied with copies of proceedings in good time. Further she had been granted temporary stay in the lower court pending the hearing of this application.
4. That the proposed respondents are unlikely to suffer any prejudice, as she has offered sufficient security

for the orders sought. Further the delay in filing of the intended appeal is not intentional but was occasioned by circumstances beyond her control.

5. She avers that it is in the interest of justice that she be given her day in court and that she is willing to abide by any conditions that the court may deem fit.
6. Upon hearing the application, the court directed that the application be served for inter-parties directions. Notably the respondent did not file a response to the application on the understanding that it would be compromised.
7. In the meantime, the parties were directed to file submissions and they complied. The applicant's counsel also indicated to the court that she was willing to give a property as security.
8. However, the respondent submitted that the total decretal sum be deposited in court and to enable the court make an informed decision, and it was

ordered that an affidavit of means be filed by either party, and matter be left to the court.

9. Notably therefore the respondent did not file any response to the application.
10. Be that as it may be, the court has had the advantage of looking at the affidavit of means that was filed by the applicant and note that she avers that she is a widow with no formal employment. Furthermore, she is asthmatic, hypertensive, and usually uses medicines which are very expensive to manage.
11. That she collects an average of about Kshs 20,000 a month from property LR Kijabe/Kijabe Block 1/135, and she has annexed to the affidavit of means a list of tenants.
12. She further states that her late husband left behind five (5) children and several grandchildren who still depend on the same property for their upkeep. As

such she can only offer the subject property as security for the audience.

13. The application is considered in the light of the materials before the court and it noted that for there to be a stay a substantive appeal must have been filed.

14. As a matter of fact, it is important to canvass the application on leave to file an appeal of time before the issue of security can be dealt with. Consequently, based on the materials before the court I allow leave to file the appeal out of time and order that the same be filed within 14 days of the date of this order.

15. The costs of this application are awarded to the respondent.

Dated, delivered and signed on this 27<sup>th</sup> day of  
March 2026

**GRACE L NZIOKA**

## **JUDGE**

In the presence of:

N/A for the applicant

N/A for the respondent

Ms. Hannah: Court Assistant