



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**CORAM: KARANJA, JA. (IN CHAMBERS)**

**CIVIL APPLICATION NO. 164 OF 2017 (UR 130/2017)**

**BETWEEN**

**GITU GEOFFREY.....1<sup>ST</sup> APPLICANT**

**SIMON GITUMBIRIRA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**CHARLENE NJERI KURIA.....RESPONDENT**

*(An application for extension of time to file and serve the Notice and Record of Appeal out of time and stay of execution pending the hearing and determination of an intended appeal from the Judgment of the High Court of Kenya at Nairobi ( Mbogholi Msagha, J) delivered on 30<sup>th</sup> November 2016*

*in*

*HCCC NO. 295 of 2014)*

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**RULING**

**Gitu Geoffrey** and **Simon Gitumbirira** (1<sup>st</sup> and 2<sup>nd</sup> applicants respectively) were the defendants in **High Court Civil Case No. 295 of 2014** while **Charlene Njeri Kuria** (respondent) was the plaintiff. The suit was a running down matter. The appellants were in the suit initially represented by the firm of Igeria & Ngugi Advocates, who were apparently instructed by the Britam Insurance Company, which had insured the 1<sup>st</sup> applicant’s motor vehicle. The suit was heard and judgment was entered against the applicants on 30<sup>th</sup> November, 2016.

According to the applicants, they did not know about the judgment until sometime on 4<sup>th</sup> April, 2017 when the Insurance Company wrote to them and informed them about the judgment, and further that they were only paying Kshs. 3,000,000/= as part of the decree leaving the applicants to meet the balance of over Kshs. 31,000,000/=.

In the meantime, the firm of Wangai Nyuthe & Co. Advocates, who had replaced Igeria & Ngugi Advocates on 19<sup>th</sup> January, 2011 filed an application to cease acting for the Insurance Company, in an application dated 17<sup>th</sup> March, 2017. It is noted however, that before they filed the application to cease

acting, they had filed a notice of motion application dated 30<sup>th</sup> January, 2017 before the High Court seeking *inter alia*, an order for extension of time to file a notice of appeal within such prescribed time as the court finds just to grant under **Section 3A, 3B and 7 of the Appellate Jurisdiction Act, Cap 9 of the Laws of Kenya**. The said application is pending hearing before the High Court.

The applicants seem to have abandoned that application and moved to this Court by way of the notice of motion dated 17<sup>th</sup> July, 2011, under **Rule 4 of the Rules of this Court** seeking extension of time within which to lodge and serve a notice of appeal and the memorandum and record of appeal.

The application is predicated on some nine grounds on its face, and supported by the affidavit of the 1<sup>st</sup> applicant sworn on 17<sup>th</sup> July, 2017. The application is opposed by the respondent vide her replying affidavit sworn on 24<sup>th</sup> July, 2017.

When the application came up before me for hearing, the applicants were represented by learned counsel, Mr. Kabugu. He narrated to the Court the history of the matter, the delay involved, the reasons for the delay and placed the blame for not filing the appeal on time at the door of the Insurance Company which had instructed previous counsel in the matter and which pulled out of the matter after paying a paltry sum out of the decretal amount, leaving the applicants to shoulder the rest of the burden.

On the existence of a similar application before the High Court, Mr. Kabugu disowned the application and maintained that the application was not theirs. Ms. Mwaniki, learned counsel for the respondent on the other hand strongly opposed the application. She was of the view that the delay has not been sufficiently explained; and further and more importantly that the applicants are in abuse of the process of the court as they cannot have two similar applications in different courts.

I have considered the application before me, along with the rival affidavits and the law applicable. In my view, this application can be disposed of on one ground i.e the existence of a similar application before the High Court which is yet to be heard. Mr. Kabugu denounces the said application, yet the parties in the application are the same parties before this Court. I appreciate the fact that the application was filed on behalf of the applicants by the Insurance Company. That is nonetheless neither here nor there. All Mr. Kabugu needed to do is to have himself placed on record in the matter before the High Court, either by consent between him and Wangai Nyuthe & Co. Advocates, or on his own application, and then pursue that application to its natural and logical conclusion. Abandoning the same and coming to this Court to file a similar one is clearly tantamount to abuse of the court process.

This Court has stated often times that filing a multiplicity of suits or applications in the same matter, seeking similar reliefs in different courts amounts to abuse of the court process and it must be discouraged.

My view of this matter is that the application pending before the High Court is in the name of the same parties herein. It matters not that it was filed on their behalf by the Insurance Company. The said application ought to be heard first and a determination given one way or another before the applicants can move this Court under **Rule 4 of the Court of Appeal Rules**.

I am in the circumstances, disinclined to grant the orders sought herein. It will not be prudent for me to make any findings on the merit of the application as this would have a bearing on the application pending before the High Court.

The upshot of this is that this application is hereby dismissed with no orders as to costs.

***Dated and delivered at Nairobi this 28<sup>th</sup> day of July, 2017.***

**W. KARANJA**

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**JUDGE OF APPEAL**

*I certify that this is a  
true copy of the original.*

**DEPUTY REGISTRAR**