



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NYERI**

**SUIT NO. 225 OF 2016**

**MICHAEL MWENDA MUGO.....CLAIMANT**

**VERSUS**

**KIRIANI FARMERS CO-OP SOCIETY LIMITED.....RESPONDENT**

**RULING**

1. The Claimant filed the present application seeking to be granted leave to act in person and leave to lodge a notice of appeal out of time and stay of execution pending the intended appeal. He gave the grounds upon which the Notice of Motion application dated 6<sup>th</sup> March 2017 (sic) was grounded. The Claimant's application was filed on 6<sup>th</sup> March 2018 and the date should have read 6<sup>th</sup> March 2017. It was expressed to be brought under Rule 4 Court of Appeal Rules, Sections 1, 1B Civil Procedure Act, Order 9 Rule 9 and Order 42 of the Civil Procedure Rules, 2010.

2. The Respondent is opposed and filed a replying affidavit sworn by Caroline Njau the manager/secretary of the Respondent on 26<sup>th</sup> April 2018. She deponed that the judgment in this case was delivered on 3<sup>rd</sup> November 2017 and the Claimant had not moved to court with clean hands. She stated that the Claimant had been awoken by the issue of costs.

3. The parties were heard on oral arguments on 26<sup>th</sup> April 2018. The Claimant argued that he sought the removal of his counsel as the advocate had not kept him apprised of the matter and that he was not aware of the outcome of the case. He stated that he was not aware of the judgment that was delivered till 6<sup>th</sup> March 2018 and that he was not aware that the Respondent could execute. He thus sought the prayers in his motion.

4. Mr. Mutegi for the Respondent argued that the motion, though dated 2017 was a 2018 motion and the same was brought in bad faith. He stated that the Respondent had been approached to give a letter of termination and this was brought to the attention of the counsel for the Respondent and a response thereto made. He argued that there was no explanation why there was no action since 6<sup>th</sup> February 2018 when the Respondent's reply was made. On leave to file appeal out of time, he urged that the Claimant had failed to show that he had an arguable appeal as no grounds were given in the affidavit in support of the motion. He argued that if there was mistake of counsel, advocates take indemnity cover and therefore the Claimant had a remedy.

5. In reply, the Claimant submitted that his lawyer had failed to inform him and because he relied on the lawyer he did not even know the letter had been written. He urged the grant of the prayers. After hearing the oral arguments, the Ruling was reserved to today.

6. In his application for stay and leave to appeal out of time, the Claimant cites Rule 4 of the Court of Appeal Rules. The appropriate court under the said Rule is the Court of Appeal. This court is not the Court of Appeal. What perhaps the Claimant wanted to do was seek leave of the superior court for stay to lodge a notice of appeal out of time. No grounds upon which the appeal lies were advanced. There is no draft memorandum of appeal, there is no indication of the extent of the appeal. Is it against the order of costs, is it against the entire judgment? As there was counsel on record, the Claimant had been represented at all stages of the trial. In some cases it was indicated expressly by the court that the Claimant was present. It is difficult to imagine that the Claimant was unaware since he and the Respondent's witness testified on 26<sup>th</sup> July 2017 that there was a judgment delivered subsequently. As is apparent, he knew his way to the Registry which he was able to approach and peruse the court file.

7. There are no grounds advanced that would persuade the court to exercise discretion in favour of the Claimant/Applicant. If the advocate misconducted himself, the Claimant has remedy against his advocate. I therefore dismiss his application filed on 6<sup>th</sup> March 2018 with no order as to costs.

It is so ordered.

**Dated and delivered at Meru this 8<sup>th</sup> day of May 2018**

**Nzioki wa Makau**

**JUDGE**