



Paul v Directline Assurance Company Limited (Miscellaneous Civil Case E1205 of 2023) [2024] KEHC 13222 (KLR) (Civ) (31 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13222 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS CIVIL CASE E1205 OF 2023

JN MULWA, J

OCTOBER 31, 2024

BETWEEN

FAITH WAYUA PAUL INTENDED APPELLANT

AND

DIRECTLINE ASSURANCE COMPANY LIMITED RESPONDENT

RULING

1. Before the court is a Notice of Motion application dated 29th November, 2023, brought pursuant to Section 1A, 1B, 3A and 79G of the *Civil Procedure Act* and Order 42 Rule 6 and Order 50 Rules 1 and 4 of the Civil Procedure Rules. The Applicant seeks extension of time to lodge an Appeal against the Judgment of the Lower Court issued on 29 September 2023 in respect of Nairobi Small Claims Court Case no.E1061 of 2023 out of time.

The Application is supported by the affidavit of Faith Wayua Paul dated 29th November 2023.

2. The Respondents opposed the application through a Replying Affidavit and grounds of opposition dated 29th November, 2023.
3. The Court has considered the parties respective affidavits in support of the Application and the Replying Affidavit and grounds of opposition to the Application as well as their respective submissions.
4. For leave to be granted, an applicant is obligated to sufficiently explain to the satisfaction of the court the cause of the delay. The circumstances that led to the delay in filing of the intended appeal within time have been explained in the supporting affidavit – at paragraph 5. That the Judgment came to their attention after the expiration of the prescribed 30 days period for filing an appeal. It is needless to state that it was not humanly possible for the applicants to know that Judgment had been delivered without



notice to them as per the Courts directions on 29th September, 2023 within the 30 days provided and to obtain the judgement and file the Appeal.

5. The Court of Appeal in *Vishva Stone Suppliers Company Ltd. V RSV Stone (2006) Ltd (2020) eKLR* held that:-
 - a. rules of procedure are handmaidens of justice, and
 - b. that a court of law should not allow the prescriptions of procedure and form to trump the primary object of dispensing substantive justice to the parties depending on the appreciation of the relevant circumstances and requirements of a particular case.
 - c. that the exercise of jurisdiction under Article 159 of *the constitution* is unfettered especially where procedural technicalities pose an impediment to the administration of justice – *Kenya Shell Ltd - vs - Kibiru & Another (1986) eKLR*.
6. In light of the above, I find and hold that the delay in filing the intended appeal within the prerequisite period has been sufficiently explained. Leave to appeal out of time is granted to the applicant, upon terms that shall be stated at the tail end of this Ruling.
7. The conditions for the grant of stay of execution pending appeal are laid out under Order 42 Rule 6(2) of the Civil Procedure Rules as follows:

“(2) No order for stay of execution shall be made under sub-rule (1) unless:

 - a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
8. The Applicant in its affidavit alleged that the matter came up for judgment on 29th September, 2023 and that the court communicated that the judgment would be transmitted via the Advocates email.
9. It further stated that contrary to directions issued the Judgment was subsequently uploaded onto the e-filing system without notice to the parties, and only got to know about it after the statutory period had lapsed.
10. On the issue of unreasonable delay, I find that there was unreasonable delay. However the application is premised on the Sections 1A, 1B and 3A of the *Civil Procedure Act* as well. These provisions mandate courts to render justice in all proceedings in a just, expeditious, proportionate and affordable cost to parties.

Exercise of discretion was stated in the *Butt vs. Rent Restriction Tribunal (1982) KLR 417*, the power of the court to grant or refuse an application for stay of execution is a discretionary power that should be executed so as not to make an Appeal nugatory, if there are no other overwhelming hindrance. However, an applicant must put forth good and sufficient grounds to pursuant the court to exercise the said powers in its favor.
11. The suit at the Small Claim Court was dismissed with costs. The issue deposit of security for the decretal sum therefore does not arise.



In *Samvir Trustee Limited vs Guardian bank Limited Nairobi Milimani HCCC 795 of 1997*, Warsame, J (as he then was) held that the court is empowered to carry out a balancing exercise to ensure justice and fairness thrive within the corridors of the court. Justice requires the court to give an order of stay with certain condition, when it is deemed fit to grant.

I am there inclined to arrive at a decision that will serve the ends of justice.

12. For the foregoing, the court allows the Applicant's Notice of Motion dated 29th November, 2023 on the following conditions:
- a. That the applicants are granted leave to file an appeal out of time.
 - b. The Memorandum of appeal be filed within seven (7) days and be exchanged
 - c. The Record of Appeal shall be filed and served within 60 days of this ruling.
 - d. There shall be a stay of execution of the trial court's Judgment dated 29th September, 2023 and any other costs pertaining to Nairobi Small Claims Court Case No.E1061 2023.
 - e. Costs of this application shall abide by the outcome of the Appeal.

Orders accordingly.

DATED, DELIVERED AND SIGNED IN NAIROBI THIS 31ST DAY OF OCTOBER 2024.

JANET MULWA

JUDGE

