



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kenya Orient Insurance Co. Ltd v Panal Freighters Ltd (Miscellaneous Application  
E014 of 2022) [2023] KEHC 1625 (KLR) (28 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1625 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
MISCELLANEOUS APPLICATION E014 OF 2022**

**A. ONG'INJO, J**

**FEBRUARY 28, 2023**

**BETWEEN**

**KENYA ORIENT INSURANCE CO. LTD ..... APPLICANT**

**AND**

**PANAL FREIGHTERS LTD ..... RESPONDENT**

**RULING**

1. The applicant Kenya Orient Insurance Co Ltd vide application dated June 13, 2022 sought for orders of stay of execution in Voi Magistrate Court Civil Case No E122 of 2021 pending the hearing & determination of the application herein.
2. They also sought that court extends time for filing appeal out of time against ruling delivered on February 16, 2022 by hon C Kithinji – PM. The application is supported by the grounds that the trial magistrate dismissed application to struck out plaint in Civil Case No E122 of 2021.
3. The application is also supported by the affidavit of Amir Said Amir the relationship manager for the applicant insurance company sworn on June 13, 2022.
4. The applicants argue that claim of Kshs 1693243.00 awarded to the respondents was material damage to the vehicle and not personal injury or death contrary to section 4 and 10 of the insurance (*Motor Vehicle 3<sup>rd</sup> Party Risk Act* chapter 405 Laws of Kenya.
5. It is averred that the advocate who was handling the matter didn't bring it to the attention of the firm of Jengo Association that a ruling had been delivered. That when the Advocate brought the ruling to their attention on June 10, 2022 they requested for a copy of the ruling and passed it to their advocate. That the applicant does not agree with the ruling and intends to appeal against it.
6. It was argued that delay is not inordinate and same was occasioned by the inadvertent mistake of the advocate who failed to advise them when ruling was delivered. It is argued that application is allowed



- the respondents will be compensated by costs. That the appeal is merited arguable and raises pertinent points of law & thus has overwhelming chances of success.
7. That if stay orders is not granted applicant will suffer substantial and irreparable loss and damages as the judgment in Civil Case No E122 of 2021 is of substantial amount and appeal will be rendered nugatory.
  8. The application was opposed by the replying affidavit of Clemence Masinde the Respondent's advocate sworn on June 25, 2022. In the replying affidavit, it is arguable that the applicant's application should be dismissed as it is bond in law, misuse of judicial process and an afterthought brought late in the day as ruling was duly delivered on February 16, 2022 in the presence of both advocates for applicants and respondents and the applicants counsel sought stay for 30 days to enable her. Lodge appeal but it was never filed.
  9. That no good cause has been were for the delay in filing appeal within the time provided under section 79(a) of the Civil Procedure Act. It was argued that the respondent will suffer greatly if an extension of filing appeal is granted.
  10. That the applicant should not be allowed to hide behind so article 159(2)(d) of the constitution as section 79G Civil Procedure Act is clear on filing of appeals from subordinate courts. That the respondents were not served with memorandum of appeal within 7 days as required in rule (2) of Civil Procedure Rule and the same is filed with sole purpose of delaying execution of decree in the lower court of SRMCC No E122 of 2021 which was slated for hearing on August 17, 2022.
  11. A supplementary affidavit was subsequently filed by Anum Said Amin sworn on August 12, 2022 indicating that respondents replying affidavit was irregularly on record as it was filed without leave of the court. The application was heard by way of written submissions.
  12. Having considered the application, the replying affidavit as well as supplementary affidavit and the attendant submissions of the parties advocates it is noted that no interim orders were issued to stay the proceedings in Voi Chief Magistrates Court Civil Case E122 of 2021 and this court finds no reason to stay the same as the applicant who is a party should have an audience to explain *vivivoce* why they were seeking that the plaint therein to be struck out.
  13. This court however finds that although the advocate who failed to pass information has not been identified and ought to have sworn the affidavit explaining the inadvertence nonetheless I find that the respondents will not suffer prejudice by the filing of appeal against a ruling of the trial Magistrate. The applicant is therefore granted to 14 days leave to file the memorandum of appeal against ruling delivered on February 16, 2022.
  14. Costs of the application to the Respondents.

**JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 28TH DAY OF FEBRUARY 2023**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**In the presence of:-**

Otolo – Court Assistant

Ms. Julie Advocate for Applicant

Ms. Masinde Advocate for Respondent



**HON. LADY JUSTICE A. ONG'INJO**  
**JUDGE**

