



**Wise Generations Limited v Moturi (Miscellaneous Application E515 of 2022)  
[2023] KEHC 1682 (KLR) (Commercial and Tax) (28 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1682 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E515 OF 2022  
PN GICHOHI, J  
FEBRUARY 28, 2023**

**BETWEEN**

**WISE GENERATIONS LIMITED ..... APPLICANT**

**AND**

**CALEB MOTURI ..... RESPONDENT**

**RULING**

1. Before this court is a Notice of Motion dated June 30, 2022 brought under Section 1A, 1B, 3A and 95 of the *Civil Procedure Act*, Order 50 Rule 6 and Order 51 Rule 1 of the *Civil Procedure Rules*. Through the firm of GN Muthie & Co advocates, the Applicant seeks orders that the court grants leave to extend the time of limited for filing of the Appeal herein following the Court's judgment delivered on May 25, 2022 in Milimani SCCOM No EO79 of 2022 Wise Generations Limited vs Caleb Moturi. He also seeks to be awarded costs.
2. That application is supported by the affidavit sworn on June 30, 2022 by Paul Mugusa as one of the Directors of the Applicant company. He states that on February 11, 2022, the Respondent borrowed a loan facility amounting to Ksh 500,000/= from the Applicant for 30 days at an interest of 10% monthly but he defaulted in payment of the principal amount and interest. As a result, the Applicant filed a suit in the Small Claims Court for recovery but the Respondent did not enter appearance or file any response to the statement of claim. The matter proceeded as undefended under Section 30 of the *Small Claims Court Act*.
3. He states that on May 25, 2022, the Court dismissed the Applicant's suit with no orders as to costs. Aggrieved, the Applicant wished to appeal but the judgment was not read in full and therefore, he could not get the reasoning thereof. That despite requesting for it on time and following up with the registry severally, his Advocate only finally got the copy on June 29, 2022 which was long after 30 days period to appeal had passed.



4. He attributes the delay in lodging the appeal to administrative lapses on the part of the Court. Referring to the Draft memorandum of Appeal dated June 30, 2022, counsel submits that the Applicant has an arguable Appeal as it raises persuasive issues of law and facts for determination by the appellate court. That no prejudice will be suffered by the Respondent if the application is allowed. On this issue he cites the case of *Hellen Wanza Maeke v Bernard Njoroge Gathua & another [2009] eKLR* where the court excused delay that was occasioned by the court registry. He therefore urges the court to allow the application.

### **Determination**

5. From the application and supporting affidavit, this was a matter which was initiated before the Small Claims Court. The legitimate expectation is that parties to such matters are given equal opportunity to access to judicial services and that the matters are handled expeditiously, at minimum costs and that there is fairness in the process.
6. It is apparent that the Respondent did not respond to the Claimant's statement of claim leading to an interlocutory judgment. After hearing the Claimant, the court found that the Claimant had proved his case. The interlocutory judgment was set aside and the Claimant's suit dismissed with no orders as to costs. Aggrieved by the judgment, the Claimant wished to have the copy of judgment and the proceedings in order to appeal.
7. No doubt, the court registry did not adhere to the principles laid down in the Act as regards taking steps towards timeous disposal of the matter by providing the documents needed by the Claimant to prefer an Appeal. Their delay also caused the lapse of the timelines for lodging an appeal. Sec 38 of the *Small Claims Court Act* No 2 of 2016 provides that :-
  1. A person aggrieved by the decision or order of the Court may appeal against that decision or order to High Court on matters of law [Emphasis mine].
  2. An appeal from any decision or order referred to in subsection (1) shall be final.
8. Delay by registry which causes a delay in filing an appeal was discussed by Okwengu J (as he then was) in *Hellen Wanza Maeke v Bernard Njoroge Gathua & another [2009] eKLR* though in respect of ordinary suits where she held:-

' The delay in filing the application was therefore about two months after receipt of proceedings and judgment. Although under section 79G of the *Civil Procedure Act* the time which is required to be excluded is the time requisite for the preparation and delivery to the appellant of the copy of the decree or order, it is understandable that copies of proceedings and judgment may be necessary in assisting the applicant's counsel in preparing the memorandum of appeal. The applicant has therefore adequately explained the delay. Given the circumstances, the delay is not so inordinate as would justify shutting out the applicant from the seat of justice.'
9. The matter which is the subject of this application was before a Small Claims Court. Abiding by the rules of procedure is very critical for parties to achieve the purpose intended by the Act particularly to ensure timeous disposal of the matter. Whereas the Claimant acted diligently in pursuit of the documents in court to enable him appeal, it is unfortunate that the court did not give the Claimant the support needed to enable him comply with the timelines.
10. The Draft memorandum of appeal annexed herein indicates that the Claimant is appealing on both facts and law. It is important for the court not to hinder the applicant from accessing the seat of justice



at this juncture. In the interest of justice, I exercise my discretion in favour of the Applicant and allow the application dated June 30, 2022 as follows;

1. The Applicant be and is hereby granted leave to file his appeal against the judgment delivered on May 25, 2022 in Milimani SCCOM No E079 of 2022 within Twenty-One (21) days from the date of this ruling.
2. The costs of the application shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISII THIS 28<sup>TH</sup> DAY OF JANUARY, 2023.**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of:

Ms Muthie for Applicant

N/Attendance by Respondent

Kevin Isindu Court Assistant

