



**Muhia v Kenya Alliance Insurance Company Limited (Commercial Appeal E022 of 2022)
[2023] KEHC 19416 (KLR) (Commercial and Tax) (30 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19416 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E022 OF 2022
DAS MAJANJA, J
JUNE 30, 2023**

BETWEEN

GEORGE NG'ANG'A MUHIA APPELLANT

AND

KENYA ALLIANCE INSURANCE COMPANY LIMITED RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. E. Kagoni, PM dated 16th December 2022 at the Nairobi Magistrates Court, Milimani in MCCOMMSU No. E629 of 2020)

RULING

1. This is an appeal from the judgment of the Subordinate Court delivered on 16th December 2022 dismissing the Appellant's claim for Kshs. 1,426,298.00 being the total cost expended on the repair of his motor vehicle after the Respondent denied his claim under a policy of insurance following a road accident. The Respondent has raised the issue of competency of the appeal which I must consider as a preliminary issue.
2. It is not in dispute that the decree appealed from was rendered on 16th December 2022 and the appeal filed on 10th February 2023. Ordinarily an appeal must be filed within 30 days from the date of the decree or order appeal from in accordance with section 79G of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya). However, under Order 50 rule 4 of the Civil Procedure Rules ("the Rules"), time stops running from 21st December of any year to 13th January of the next year both dates inclusive.
3. In this case, the Appellant's time from 16th December 2022 to 21st December 2022 was 4 days. 30 days exclusive of the dead or excluded time would mean that the appeal would have to be filed by 8th February 2023 latest.



4. The Appellant relies on Order 50 rule 3 of the Rules to argue that since 14th January 2023 was a Saturday, then both 14th and 15th January were excluded hence the appeal having been filed on 10th February 2023 is competent. The Respondent disagrees that both dates are excluded days.
5. Order 50 rule 3 of the Rules provides as follows:

Where the time for doing any act or taking any proceedings expires on a Sunday or other day on which the offices are closed and by reasons thereof, such act or proceeding cannot be done or taken on that day, such act or proceeding shall so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open. [Emphasis mine]
6. The operative words as above refer to the date of doing any act or taking any proceedings which expires on Sunday or on a date when the offices are closed. In this case, the last date for filing the appeal was on Wednesday, 8th February 2023. This is the date contemplated above, that is, the date for doing an act or taking proceedings and which, if it fell on the date on which the offices were closed, then the Appellant would be entitled to file its appeal on the next day. As the court offices were open, nothing prevented the Appellant from filing the appeal on that day; Wednesday, 8th February 2023. On the other hand, 13th and 14th January 2023 were not the last days for filing the appeal contemplated by Order 50 rule 3 of the Rules.
7. This appeal is therefore incompetent and must be struck out. It is struck out with costs to the Respondent assessed at Kshs. 20,000.00.

SIGNED AT LONDON, ENGLAND

D. S. MAJANJA

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JUNE 2023.

F. MUGAMBI

JUDGE

Court Assistant: Mr M. Onyango.

Mr Mugisha instructed by Nyaanga and Mugisha Advocates for the Appellant.

Mr Ngugi instructed by C. N. Ngugi and Associates Advocates for the Respondent.

