



**Kenya Women Finance Trust v Ngari (Miscellaneous Civil Application
E27 of 2021) [2022] KEHC 3335 (KLR) (27 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 3335 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CIVIL APPLICATION E27 OF 2021**

**EKO OGOLA, J
JUNE 27, 2022**

BETWEEN

KENYA WOMEN FINANCE TRUST APPLICANT

AND

MARGARET WAIThERA NGARI RESPONDENT

RULING

1. This ruling relates to the Applicant's applications dated 6th April, 2022 and 4th April, 2022. The Applicant's application dated 6th April, 2022 is spent as the Applicant on 13th April, 2022 deposited half of the decretal sum in Court. The application that is pending before Court is the one dated 4th April, 2022 in which the Applicant seeks the following orders:
 - 1) Spent
 - 2) That there be stay of execution of the decree and all the orders arising from the judgment delivered on 20th August, 2020 by Hon. Naomi Wairimu (PM) in Eldoret CMCC No. 140 of 2014; Margaret Waithera Ngari Vs. Kenya Women Finance Trust pending the hearing and determination of this application.
 - 3) That the Applicant be granted more time to:
 - a) File an appeal against the decree arising out the judgment delivered on 20th August, 2020 by Hon. Wairimu (PM) in Eldoret CMCC No. 140 of 2014; Margaret Waithera Ngari v Kenya Women Finance Trust.
 - b) Deposit half of the decretal sum in an interest earning account in the joint names of the Advocates for the parties.
 - 4) That there be stay of execution of the decree and all orders arising from the judgment delivered on 20th August, 2020 by Hon. Naomi Wairimu (PM) in Eldoret CMCC No. 140



of 2014; Margaret Waithera Ngari v Kenya Women Finance Trust pending the hearing and determination of the Applicant's intended appeal against the said judgment.

- 5) That the directions of this Honourable Court on this application be communicated to the Applicant by the Deputy Registrar of this Honourable Court if they are given in the absence of the Applicant.
 - 6) That the Court file for this matter be kept in the strong room.
 - 7) That the costs of this application be provided for.
2. The application is premised on the grounds on the face of it and it is further supported by the affidavit Dominic Bisonga sworn on 4th April, 2021. He deposed that the Applicant herein, filed in this Court an application dated 12th March, 2021 in which the Applicant sought for: leave to file an appeal out of time against the judgment delivered in Eldoret CMCC No. 140 of 2014; Margaret Waithera Ngari v Kenya Women Finance Trust and stay of execution of the decree pending the hearing and determination of the intended appeal.
 3. The Applicant averred that on 6th July, 2021 the said application was heard and fixed for ruling on 12th October, 2021. That on 12th October, 2021 the said ruling was not delivered and parties were directed that the ruling would be delivered on notice.
 4. The Applicant averred that on 1st December, 2021 the Applicant's Counsel visited the registry with a view to finding out when the ruling would be delivered and was informed that ruling had been delivered on 29th October, 2021 and was advised to get a copy of the same from the library. That upon visiting the library, Counsel for the Applicant found a copy of the said ruling in which Court had granted the Applicant leave to appeal out of time against the judgment of the trial court and had issued stay of execution of the said judgment on condition that the appeal was to be filed within 14 days from the date of the ruling and that half of the decretal sum to be deposited in an interest earning account in the joint names of the Advocates for the parties within 14 days from 29th October, 2021.
 5. The Applicant deposed that the ruling had been delivered in the absence of the Applicant and without notice to the Applicant. The Applicant maintains that on 1st December, 2021 when it became aware of the contents of the said ruling, time for compliance had already lapsed.
 6. The Applicant averred that on 8th December, 2021 it filed application dated 2nd December, 2021 seeking for: enlargement of time to comply with the conditions given by this Court on 29th October, 2021 for stay of execution of the decree of the trial Court pending the hearing and determination of the application dated 2nd December, 2021 and stay of execution of the decree of the trial Court pending the determination of the intended appeal.
 7. The Applicant further averred that upon filing of the application dated 2nd December 2021, Counsel for the Applicant sent a representative one Simon Buchira to the registry to confirm which directions had been given with respect to the said application. That the said Simon Buchira on diverse dates in December 2021 and early January 2022 visited the Court's registry and was informed by the Court assistants at the registry that the Court file with respect to this matter was not available at the registry.
 8. The Applicant averred that vide a letter dated 10th January, 2022 which was copied to the Respondent's Counsel, the Applicant's Counsel requested the Deputy Registrar to assist in locating the said court so as to place the Applicant's application dated 2nd December, 2021 before the Judge for directions.



9. The Applicant averred that on 24th March, 2022 as it was awaiting a response from the Deputy Registrar, the Respondent's Counsel forwarded via email a copy their letter dated 23rd March 2022, stating as follows; "Your allegations are false. Kindly settle the decretal sum."
10. The Applicant's Counsel on 30th March, 2022 visited the registry to find out whether the Court file had been found and he was informed by a Court assistant that the file was still not available. That on 31st March, 2022 Counsel for the Applicant was informed by the Applicant that the Respondent had on 30th March, 2022 attached the Applicant's tools of trade in execution of the decree arising out of Eldoret CMCC No. 140 of 2014; Margaret Waithera Ngari v Kenya Women Finance.
11. Counsel for the Applicant on 1st April, 2022 visited the chambers of the Deputy Registrar and requested her to assist in locating the said Court file; and it turned out that the Applicant's letter dated 10th January, 2022 had not been brought to the attention of the Deputy Registrar. That upon the intervention of the Deputy Registrar on 1st April, 2022 the Court file was found on the same day. Further that upon perusal of the said Court file, Counsel for the Applicant learnt that the Applicant's application dated 2nd December, 2021 and filed on 8th December, 2021 had been placed before a Judge on 14th December 2021, six days later for direction and that the Judge upon perusal of said application allowed it as prayed, in the absence of the parties and directed that the Applicant complies with this Court's ruling that was rendered on 29th October, 2021 within 14 days from 14th December, 2021.
12. The Applicant maintains that prior to 1st April, 2022 it was not aware of the directions that had been given by this Court on 14th December, 2021. The Applicant deposed that it did not comply with the directions that had been given on 14th December, 2021 as it was not aware of said directions until 1st April, 2022.
13. The Applicant urged Court to allow the Application as prayed.
14. The Respondent's Counsel in this matter was duly served with the application dated 4th April, 2022 but did not file any response.

Determination

15. In the application dated 4th April 2022, the Applicant seeks two substantive prayers; that of stay of execution and leave to appeal out of time. In my view, the prayer for leave to appeal out of time ought to be determined first since if the same is denied, there will be no basis of considering the prayer of stay of execution.
16. Section 79G of the *Civil Procedure Act* provides that:

"Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time."
17. The Court of Appeal *Edith Gichugu Koine v Stephen Njagi Thoithi* [2014] eKLR stated that whenever an application for extension of time is before a court, the court ought to take into account several factors specifically, the period of delay, the reasons for the delay, the degree of prejudice to the respondent if the application is granted, and whether the matter raises issues of public importance, amongst others..."



18. Odek JA in the *Edith Gichugu Koine* (supra) case added that:

“There is also a duty now imposed on courts to ensure that the factors considered are in consonance with the overriding objective of civil litigation, that is to say, the just, expeditious, proportionate and affordable resolution of disputes before the court.”

19. Under section 79G of the *Civil Procedure Act*, a party may be granted leave to file an appeal out of time if he satisfies the court that he has good reason for not filing the appeal within the time provided by law.

20. In this case, the decision that the Applicant seeks to appeal against was delivered on 20th August, 2020. The application for leave to file the appeal out of time was filed on 12th March, 2021. The Applicant alleged that it learnt of the ruling in the said application on 1st December, 2021. This, the Applicant attributes to the fact that the ruling in the said application was to be rendered on 12th October, 2021 but the same was not delivered and parties were advised that the same would be delivered on notice. The Applicant contends that that ruling of 29th October, 2021 was delivered in its absence and without notice to the Applicant.

21. The Applicant’s case is that upon learning that Court had since issued the ruling on 29th October, 2021 and the time for compliance having lapsed, the Applicant on 8th December, 2021 filed the application dated 2nd December, 2021 seeking inter alia for: enlargement of time to comply with the conditions given by this Court on 29th October, 2021, stay of execution of the decree of the subordinate Court pending the hearing and determination of the application dated 2nd December, 2021 and stay of execution of the decree of the subordinate Court pending the determination of the intended appeal.

22. The Applicant submitted that upon filing of the application dated 2nd December, 2021 the Court file in this matter went missing and that following the Applicant’s Counsel efforts to trace the same the file was found on 1st April, 2022 and that application dated 2nd December, 2021 had been placed before the judge on 14th December, 2021. The Applicant further submitted that it did not comply with the orders therein as it only became aware of the same on 1st April, 2022.

23. The period between the delivery of the judgment and the filing of this application is about 18 months. The Applicant herein has rendered an explanation and has tendered evidence in support of its averments as to what occasioned the delay herein. I believe the interests of justice demand that the Applicant be granted leave to appeal out of time.

24. Accordingly, I grant leave to the Applicant to file the appeal out of time. The Memorandum of Appeal shall be filed and served within 14 days from the date hereof. This period shall not be extended.

25. As regards stay, the Applicant on 13th April, 2022 deposited half of the decretal sum awarded to the Respondent in Court. Accordingly, an order of stay is hereby issued staying the execution of the judgment, decree and orders of the lower Court made by Hon. Naomi Wairimu (PM) on 20th August, 2020 in Eldoret CMCC No. 140 of 2014; Margaret Waithera Ngari v Kenya Women Finance Trust pending the hearing and determination of the intended appeal.

26. The costs of this application shall be in the intended appeal.

DATED, SIGNED AND DELIVERED THIS 27TH OF JUNE 2022.

E. K. OGOLOA

JUDGE

