



**Piedmont Investments Ltd v Polo Money Services Ltd (Civil Case 12 of 2015)
[2022] KEHC 14596 (KLR) (Commercial and Tax) (28 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14596 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 12 OF 2015
A MABEYA, J
OCTOBER 28, 2022**

BETWEEN

PIEDMONT INVESTMENTS LTD PLAINTIFF

AND

POLO MONEY SERVICES LTD DEFENDANT

RULING

1. This ruling is in respect to the plaintiff's application dated October 21, 2020. The application was brought pursuant to section 3A of the *Civil Procedure Act*, orders 50 rule 5 and 51 of the *Civil Procedure Rules*.
2. The application sought orders for enlargement of time for the payment of Kshs 350,000/- to the defendant and leave to have the said amount deposited in court. The plaintiff further sought to have the deputy registrar of the court be directed to transfer the stock to Maxwell Otieno Odongo.
3. The grounds for the application were set out on the face of the motion and the affidavit of Maxwell Otieno Odongo, a director of the plaintiff company. The plaintiff's case is that the dispute between the parties was settled through mediation and the plaintiff was directed to pay Kshs 350,000/- on or before April 16, 2020.
4. The plaintiff was not able to raise the money up until September 21, 2020 citing difficulties occasioned by the covid-19 pandemic. The defendant refused to receive the said sum and the formal notice dated October 7, 2020 went unanswered.
5. The defendant opposed the application vide the replying affidavit dated January 6, 2021 by Isaac Aluoch Aluochier, a director of the defendant. He averred that the plaintiff had breached the mediation settlement and as such had lost the entitlement to the benefit from the said settlement.



6. That the defendant had been informed by the plaintiff that the cheques were available for collection but on arriving at the plaintiff's premises, the defendant was given a new offer which, if had been accepted would have amounted to a new contract. The defendant faulted the plaintiff for seeking to enforce a contract that it had breached and had lapsed on its own account.
7. The application was canvassed by written submissions which I have considered.
8. The issue for determination is whether the plaintiff/applicant is entitled to the orders sought. The applicant has moved the court for orders for enlargement of time for payment of Kshs 350,000/- to the defendants. This amount was arrived at pursuant to the mediation settlement dated 16/1/2020. In that settlement, the plaintiff was to pay the said amount before April 16, 2020 and the defendant would in turn transfer one management share to Maxwell Otieno Odongo. It was the defendant's case that the plaintiff acted in bad faith by failing to disclose its financial standing as at the time of the settlement.
9. The plaintiff defaulted in the payment of the said amount on the agreed date for reasons that the covid-19 pandemic affected its cash flows. The defendant on the other hand observed that it was under no compulsion to perform its obligation as per the mediation agreement on account of the plaintiff's noncompliance.
10. The court's power to enlarge time is derived from section 95 of the *Civil Procedure Act* which provides that: -

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.
11. From the foregoing, the court has the discretion to extend time however that could only be achieved upon consideration of some factors such as delay, the prejudice it would occasion the other party and any other sufficient cause. It is not disputed that the plaintiff reached out to the defendant for payment of the agreed amount 5 months after the agreed time. While it is apparent that the law does not set the maximum time for delay, it is important that the delay is satisfactorily explained.
12. According to the plaintiff, the delay was occasioned and attributed to the covid 19 pandemic that affected its cash flows. I take notice of the fact that the mediation settlement was made on January 16, 2020 well before the covid-19 pandemic.
13. However, I am of the view that the plaintiff ought to have informed the defendant of the difficulties and challenges occasioned to it immediately before or after the time of performance had reached. It failed to do so until after 5 months later. That was inordinate delay. Delay defeats equity.
14. Since the settlement agreement was a contract between the parties, I do not see how the court can vary its terms against the will of one of the parties. In this regard, I find that the application dated October 21, 2020 to be without merit and dismiss the same with costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF OCTOBER, 2022.

A. MABEYA, FCI Arb

JUDGE

