



**Al Siddique Motors Ltd v Manjewa (Civil Appeal E039 of 2023)
[2025] KEHC 2339 (KLR) (24 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2339 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E039 OF 2023
AN ONGERI, J
FEBRUARY 24, 2025**

BETWEEN

AL SIDDIQUE MOTORS LTD APPELLANT

AND

MARY KAMENE MANJEWА RESPONDENT

RULING

1. The application coming for consideration in this Ruling is the one dated 4th November 2024 brought under Section 7 of the *Appellate Jurisdiction Act*, Chapter 9 Laws of Kenya Section 1A and 1B of the *Civil Procedure Act* and Section 59 of the Interpretation & General Provision Act Chapter 2 Laws of Kenya and Order 50 Rule 5 of the Civil Procedure Rules seeking the following orders:-
 - i. That service of this application in the first instance be dispensed with, the same be heard ex-parte and certified urgent.
 - ii. That upon the hearing of this application ex-parte there be a stay of proceedings in Mary Kamene Manjewa =Vs= Al Siddique Motors Limited, Voi CMCC No. E062 of 2020 as varied vide the judgement of this court in this appeal delivered on 23rd July 2024 pending the hearing and determination of this application inter-parties.
 - iii. That the Honourable Court do extend time for the Appellant to give a notice of intention to appeal against its judgment dated 23rd July 2024 by fourteen days from the date of its delivery of the ruling in this application.
 - iv. That upon the hearing of this application interparties there be a stay of the proceedings in Mary Kamene Manjewa =Vs= Al Siddique Motors Limited, Voi CMCC No. E062 of 2020 as varied vide the judgement of this court in this appeal delivered on 23rd July 2024 pending the hearing and determination of the intended appeal to the Court of Appeal.



- v. Costs.
2. The application is supported by the affidavit of Mckmillan E. Jengo which is a retaliation of the grounds above.
3. The Respondent filed Replying Affidavit opposing the application sworn on 8th November 2024 by Mary Kamene Manjewa in which she deponed as follows:-
- i. That I am a female adult of sound mind and the Respondent hence competent to swear this affidavit.
 - ii. That I have read the Notice of Motion dated 4th November 2024 and the supporting affidavit of Mckmillan E. Jengo and as such I am able to depon this affidavit on matters that I can prove of my own knowledge save where sources of my knowledge have been duly disclosed.
 - iii. That the instant application is ill intentioned, an afterthought and an abuse of the court process and as such the same should be dismissed with costs.
 - iv. That I am informed by my Advocates on record which information I verily believe to be sound that this matter was slated for delivery of judgment on 6th June 2024 wherein my Advocate one Mr. Kazungu appeared on my behalf while the Appellant was represented by one Mr. Kioko, Advocate and the learned Judge informed the parties that the judgment was not ready and rescheduled to 23rd July 2024 in the presence of the counsels for both parties.
 - v. That on 23rd July 2024 when the matter was slated for judgement my Advocate attended court whereas the Appellant and its counsel elected not to attend court and the magistrate proceeded to deliver the judgement.
 - vi. That in the present digitized/automated court processes the judgement was uploaded into the Judiciary e-portal and it has been available to both parties, the Appellant therefore had access to the same and did not bother to appeal if it was dissatisfied.
 - vii. That the Appellant herein has been indolent and not worthy to be granted the orders sought in the instant application. This is because the judgement was delivered way back in July and the Appellant had notice of the same and it did not make any follow up for four months.
 - viii. That the application is intended to further delay my case which has been in court for the last four years.
 - ix. That the instant application is bereft of any merits and the same should be dismissed with costs.
 - x. That flowing from the foregoing the instant application is bereft of any merits and the same should be dismissed with costs.
4. The parties filed written submissions as follows:- the applicant submitted that it is not in dispute that the delay in filing the appeal was occasioned by the applicant's counsel failing to diarize in the court delivery of the judgement being on 23/7/2024 hence failing to attend court or notify the applicant about the ruling.
5. On whether the client was notified on 30/10/2024, it instructed the counsel to file an appeal and this application was thereafter filed on 4th November, 2024.
6. The applicant submitted that no prejudice will be occasioned to the respondent if the application is allowed. The applicant argued that the intended appeal is arguable. The facts are that the parties herein are involved in a suit in the subordinate court. after all the parties had been heard, submissions filed



and the matter was pending judgment the plaintiff applied to recall the file; set aside all proceedings introduce new evidence and amendments that changed the nature of the case.

7. Further, that the applicant believes this undermined its rights to a fair hearing hence the issue should be ventilated in the court of appeal.
8. The issues for determination in this application are as follows;
 - (i) Whether Applicant should stay proceedings and leave to appeal out of time.
 - (ii) Whether there should be stay of proceedings pending the appeal to the Court of Appeal.
9. The governing provision for leave to appeal out of time is Section 79G which states as follows:-

“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.

10. I find that the court has a wide discretion to grant leave to appeal out of time on certain conditions. In the case of Paul Musili Wambua vs Attorney General & 2 Others [2015] eKLR, the Court of Appeal in considering an application for extension of time and leave to file the Notice of Appeal out of time stated the following:-

“.....it is now settled by a long line of authorities by this court that the decision of whether or not to extend the time for filing an appeal the Judge exercises unfettered discretion. However, in the exercise of such discretion, the court must act upon reason(s) not based on whim or caprice. In general the matters which a court takes into account in deciding whether or not to grant an extension of time are; the length of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted.”

11. The reason for the delay was on the part of the Appellant’s Counsel. The mistake of the Counsel ought not be visited upon the Applicant.
12. I allow the applicant to file his appeal to the Court of Appeal out of time on condition that the same is filed within 30 days of this date.
13. However, on the issue as to whether there be a stay of the proceedings in Mary Kamene Manjewa =Vs= Al Siddique Motors Limited, Voi CMCC No. E062 of 2020 as varied vide the judgement of this court in this appeal delivered on 23rd July 2024 pending the hearing and determination of the intended appeal to the Court of Appeal, I find that this case has already been delayed by this appeal.
14. In the case of Global Tours & Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000 Ringera J, (as he then was) stated as follows;

-“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or



not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”.

15. The issue was also discussed in the Kenya Wildlife Service VS James Mutembei (2019) eKLR, Gikonyo J quoted Halsbury’s Law of England, 4th Edition. Vol. 37 page 330 and 332, that:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue. This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

16. I find that grant of stay of proceedings is not in the interest of justice in the current case. The case has already been delayed by this appeal. I decline to grant stay of proceedings and I direct that the Trial Court proceeds with dispensation of the case.

17. The costs of this application to abide the cause.

DATED, SIGNED AND DELIVERED THIS 24TH DAY OF FEBRUARY 2025 IN OPEN COURT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Maina

Mr. Kioko for the Appellant

Mr. Kazungu for the Respondent

