



Arrow Head Distributors Ltd v Prestigious Professional (Prepo) Marketers (Civil Appeal E899 of 2024) [2025] KEHC 1339 (KLR) (Civ) (13 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1339 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL APPEAL E899 OF 2024**

**TW CHERERE, J
FEBRUARY 13, 2025**

BETWEEN

ARROW HEAD DISTRIBUTORS LTD APPELLANT

AND

PRESTIGIOUS PROFESSIONAL (PREPO) MARKETERS RESPONDENT

RULING

1. The Appellant/Applicant has moved this Court by way of a Notice of Motion dated 30th September 2024, seeking an order for enlargement of time to appeal the judgment in SCCCOM NO. E9580 OF 2023 that was delivered on 28th June 2024. The Appellant further seeks a stay of execution of the judgment pending the intended appeal.
2. The application is supported by the affidavit of Wilson Mbugua Nganga, a director of the Appellant, who avers that his previous advocate failed to file the appeal within time, thus necessitating this application. The Applicant also contends that the trial court lacked jurisdiction as the agreement between the parties contained an arbitration clause, which the trial court allegedly ignored despite the issue being properly raised in the defence.
3. The application is unopposed, as the Respondent has not filed any response or objection within the stipulated time.
4. The absence of opposition does not however automatically entitle the Appellant to the orders sought, and the Court must still satisfy itself that the legal requirements for the grant of the orders are met, that the application is meritorious and the prayers may be granted (see *Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 Others* Civil Application No.26 of 2018 [2018] eKLR).



5. I have considered the application in the light of the supporting affidavit and pleadings filed in this matter and the issues for determination are:
 1. Whether the Applicant has demonstrated sufficient cause for the enlargement of time to appeal the judgment of the trial court.
 2. Whether the Applicant has met the legal threshold for the grant of a stay of execution pending appeal under Order 42 Rule 6(2) of the [Civil Procedure Rules](#)
6. The principles governing the enlargement of time are well settled. Section 79G of the [Civil Procedure Act](#) provides:

“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.”
7. Additionally, Order 50 Rule 6 of the [Civil Procedure Rules](#) grants the Court discretion to extend time where sufficient cause is demonstrated. It states:

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the Court, the Court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require.”
8. This discretion to enlarge time must be exercised judiciously and not arbitrarily, as was held in [Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others](#) [2014] eKLR, where the Supreme Court outlined guiding principles for enlargement of time, including the length of delay, the reason for delay, the degree of prejudice to the other party, and the chances of the appeal succeeding.
9. In the present case, the length of the delay and the reason for the delay (inaction by the previous advocate) appear reasonable and sufficient to justify the extension of time.
5. The principles governing stay of execution are set out under Order 42 Rule 6 of the [Civil Procedure Rules](#), which provides that an applicant must demonstrate:
 - a) Substantial loss if stay is not granted;
 - b) That the application has been filed without unreasonable delay; and
 - c) That security for the due performance of the decree has been provided.
6. The Applicant argues that he stands to suffer irreparable loss as warrants of sale of his property have already been issued. The concept of substantial loss is critical in an application for stay of execution, as emphasized in [RWW v EKW](#) [2019] eKLR, where the Court held that the purpose of stay of execution is to preserve the subject matter so that the appeal, if successful, is not rendered nugatory.
7. Applicant has demonstrated that execution is imminent and I therefore find that the Appellant has demonstrated substantial loss.
8. On the issue of whether the appeal is arguable, the Appellant contends that the trial court assumed jurisdiction despite the existence of an arbitration clause, which was properly raised in the defence. The principle of party autonomy in arbitration is well established, and courts are required to give effect to valid arbitration agreements unless circumstances exist that warrant judicial intervention. In



Nyutu Agrovet Limited v Airtel Networks Kenya Limited & Another [2019] eKLR, the Supreme Court emphasized that arbitration should be respected as a means of dispute resolution and that courts should only intervene in exceptional circumstances.

9. Given that this issue of whether the trial court erred in assuming jurisdiction in the matter is central to the appeal, I find that the Appellant has an arguable appeal.
5. Although the Appellant has not offered security for the due performance of the decree, security under Order 42 rule 6(2) guarantees the due performance of such decree or order as may ultimately be binding on the Appellant as was held in the case of *Arun C. Sharma v Ashana Raikundalia T/A Rairundalia & Co. Advocates* (2014) eKLR.
6. In the result, the Notice of Motion dated 30th September 2024 is allowed in the following terms:
 1. The firm of Wokabi Mathenge & Co. Advocates is placed on record for the Appellant
 2. I allow the prayer for the enlargement of time and direct the Applicant to file the intended appeal within fourteen (14) days from the date of this ruling and the record of appeal within 30 days
 3. There shall be a stay of execution of the judgment in SCCCOM No. E9580 of 2023 pending the hearing and determination of the intended appeal on condition that the Appellant deposits ½ of the decretal sum with the court within 30 days
 4. The costs of this application shall abide by the outcome of the appeal.
 5. Mention before the Deputy Registrar of this court on 27th March 2025 to confirm compliance with the orders on the filing of the appeal

DELIVERED AT NAIROBI THIS 13TH DAY OF FEBRUARY 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Appellants - Mr. Mathenge for WOkabi Mathenge & Co. Advocates

For Respondent - Ms.Kirui for MKN & Co. Advocates

