



East Africa Institute of Certified Studies Limited & another v Wanjiru (Miscellaneous Application E027 of 2024) [2025] KEHC 8886 (KLR) (4 February 2025) (Ruling)

Neutral citation: [2025] KEHC 8886 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS APPLICATION E027 OF 2024
AN ONGERI, J
FEBRUARY 4, 2025**

BETWEEN

EAST AFRICA INSTITUTE OF CERTIFIED STUDIES LIMITED 1ST PLAINTIFF

SMART COACH LIMITED 2ND PLAINTIFF

AND

ANTHONY WACHIRA WANJIRU DEFENDANT

RULING

1. The application coming for consideration in this Ruling is the one dated 23rd August 2024 brought under Section 3A, 79G and 95 of the *Civil Procedure Act* (Cap.21), Order 22 Rule 22, Order 42 Rule 6, Order 50 Rule 6 and Order 51 Rules 1 and 3 of the Civil Procedure Rules 2010 and all other enabling provisions of the Law.
2. The application is based on the grounds on the face of it as follows:-
 - i. That Judgement in Voi CMCC No. E112 Of 2022 was delivered on 28th May, 2024.
 - ii. That the Applicants being aggrieved by the said judgment on the issue of quantum and liability seek leave to appeal out of time.
 - iii. That the delay in filing the appeal was occasioned by the late issuance of instructions by the Applicants to file the appeal.
 - iv. That the Applicants' insurer has been unable to settle the decretal amount since their accounts have been frozen by the Insurance Regulatory Authority.
 - v. This application is timely made and without any unnecessary delay.



- vi. The Applicant stand to suffer substantial and irreparable loss and damage as there is a likelihood that the Applicant will be unable to recover the decretal sum awarded herein from the Respondent.
 - vii. Unless this application is allowed, the Applicants' intended appeal will be rendered nugatory.
 - viii. The Applicant has a good arguable appeal which has high chances of success.
 - ix. The Respondent will not suffer any prejudice or any damage that cannot be compensated by way of costs if this application is allowed.
3. The Respondent filed a Replying Affidavit opposing the application as follows:-
- i. That the judgment herein was delivered in presence of the Defendant/Appellant's Advocate on 28th May 2024 and if the Defendant/Appellant was aggrieved then the Memorandum of Appeal, or even a holding Memorandum of Appeal or a letter requesting for proceedings would have been issued well within 30 days of 28th May 2024.
 - ii. That having failed to file the Appeal on time, and further waiting from 28th May 2024 to 23rd August 2024 to make this application amounts to inordinate delay which is not explained.
 - iii. That the reason adduced by the Defendant/Appellant amounts to an admission that there is no tenable appeal as they have stated that the failure to pay was frozen account.
 - iv. That again filing an Appeal within 30 days is a legal requirement and for a court to depart from the requirement, by extending the said timeline can only be done when clear and lucid reasons for the failure to comply with the legal timelines have been given in this case and as such the court have no basis to exercise discretion in extension of time.
 - v. That allowing this application would be prejudicial to me having sustained debilitating injuries that require continuous medication and having suffered 15% incapacity that have reduced my capacity to work.
 - vi. That if the court formed the opinion that there is any merit in this ill-fated application, then I would pray that:-
 - a. Half the decretal sum be released to my Advocate within 21 days and,
 - b. Half the decretal sum be deposited in an interest earning account within 21 days and,
 - c. The Record of Appeal be prepared in specified time and,
 - d. In the default of any one of the conditions, the application do stand dismissed.
 - vii. That liability herein was adopted from Voi CMCC No. E083 of 2022 where Defendant/Appellant preferred an appeal in the High Court which was dismissed on 11th July 2024 with costs and no appeal was filed in the Court of Appeal. As such there cannot be an issue of liability in these proceedings.
4. The parties filed written rival submissions which I have duly considered. The applicant stated that they received the instructions to appeal late.
5. The issues for determination in this Ruling are as follows:-
- i. Whether the Applicant should be granted leave to appeal out of time.



- ii. Whether the Applicant should be granted stay of execution pending appeal.
6. On the issue as to whether the Applicant should be granted leave to appeal out of time, the decision whether or not to grant leave to appeal out of time or to admit an appeal out of time is an exercise of discretion just like any other exercise of discretion by the court.
7. Some of the factors that aid Courts in exercising the discretion whether to extend time to file an appeal out of time were suggested by the Court of Appeal in *Thuita Mwangi V Kenya Airways Ltd* [2003] eKLR. They include the following:
 - i. The period of delay;
 - ii. The reason for the delay;
 - iii. The arguability of the appeal;
 - iv. The degree of prejudice which could be suffered by the if Respondent the extension is granted;
 - v. The importance of compliance with time limits to the particular litigation or issue; and
 - vi. The effect if any on the administration of justice or public interest if any is involved.
8. I grant the Applicant leave to appeal out of time. The appeal to be filed within 30 days of this date.
9. On the issue of stay of execution pending appeal, the governing provision is Order 42 Rule 6 which states as follows:-

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.(2)No order for stay of execution shall be made under subrule (1) unless—(a)the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and(b)such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

10. I grant stay pending appeal on condition that half the decretal sum be paid to the Respondent and half be deposited in court within 30 days of this date.
11. The Applicant to pay the costs of the application assessed at Kshs. 10,000/=

DATED, SIGNED AND DELIVERED THIS 4TH FEBRUARY 2025 IN OPEN COURT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Maina

