



REPUBLIC OF KENYA



**Matunda (Fruits) Bus Services Limited & others v Mungai & another (Miscellaneous Application E198 of 2024) [2025] KEHC 1739 (KLR) (11 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1739 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS APPLICATION E198 OF 2024  
SM MOHOCHI, J  
FEBRUARY 11, 2025**

**BETWEEN**

**MATUNDA (FRUITS) BUS SERVICES LIMITED & OTHERS ..... APPLICANT**

**AND**

**SIMONA WANJORA MUNGAI ..... 1<sup>ST</sup> RESPONDENT**

**SCANIA CREDIT SOLUTIONS (PROPRIETARY) LIMITED 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before Court for determination is the Applicant's Notice of Motion Application dated 19<sup>th</sup> July, 2024 brought under Sections 1A, 1B, 3A 79G and 95 of the *Civil Procedure Act* and Order 42 Rule 6 (1), (2) & (7), Order 50 Rule 6 and Order 51 Rule 1 of the *Civil Procedure Rules* wherein he seeks:
  - a. Spent
  - b. That the Honourable Court be pleased to grant the Applicant leave to Appeal out of time in respect to the judgment /decree delivered in Nakuru CMCC No. E015 of 2022 by Hon. Peter A. Ndege (RM)
  - c. Spent
  - d. That the Honourable Court be pleased to grant an order of Stay of Execution of the judgment and or Decree delivered on 28<sup>th</sup> November, 2023 and all consequential orders arising therefrom pending the hearing and determination of the intended Appeal herein.
  - e. This Court be pleased to issue an order for provision of a bank guarantee of Kshs 395,984 plus costs and interests only as security pending the hearing and determination of the intended Appeal herein;



- f. This Honourable Court be pleased to issue any other order as it may deem just appropriate and expediate in the interest of justice;
  - g. Costs of this Application be provided for.
2. The Application was predicated on the grounds on its face, the Supporting Affidavit of Cherotich Faith, Advocate sworn on the same date.

### **Applicant's Case**

3. Judgment in Nakuru E015 of 2022 was delivered on 28<sup>th</sup> November, 2023 in favour of the Respondent and that the Applicants are yet to receive a copy of the judgement despite requesting the same from the Executive Officer.
4. She deposed that they advised their instructing client Directline Assurance Ltd of the terms of the judgement for further instructions of forwarding the payments. Unfortunately, the claims officer who received the terms of the judgment left employment of Directline assurance.
5. She deposed further that she followed up with the payment and the client being dissatisfied with the terms of the judgment instructed them to file an appeal. That by the time they received instructions, the period for lodging the appeal had lapsed. It was her case that the appeal raises triable issues and points of law and has a high chance of success.
6. She deposed further that they are apprehensive that the Respondent will commence execution proceedings thereby rendering the appeal nugatory. That the Respondent's income is unknown hence there is a likelihood that he may not be able to refund the decretal sum in the event the appeal succeeds. That they are willing to provide a bank guarantee for the entire decretal sum pending hearing and determination of the appeal.
7. She argued that the Applicant's right of appeal will be injured if the prayers sought are not granted. That the Respondent will not be prejudiced in any way and that the Applicant is willing to abide by the terms and conditions that will be imposed. The Application is made in utmost good faith and without undue delay.

### **Respondent's Case**

8. The Respondent through his counsel John Ndug'u Njuguna filed his Replying Affidavit sworn on 13<sup>th</sup> January, 2025 in opposition to the Application. He deposed that the bank guarantee be issued for the entire decretal sum and not part thereof.
9. Argued in his affidavit that security must be one that shall achieve due performance of the decree which might ultimately be binding on the Applicant. He relied on *Safaricom Limited v Dickson Kimweli King'oo & another* [2022] KEHC 3141 (KLR).
10. The Court directed parties to file written submissions. Neither party has filed submissions.

### **Analysis and Determination.**

11. I have considered the applications and the affidavits in support and against it and the the issues for determination are: -
  - a) Whether the Application is merited



12. The Applicable law for extending time pending appeal is found in Section 79G of the [Civil Procedure Rules](#) and judicial pronouncements which have set forth the trajectory for what is to be considered when dealing with an application to extend time to file an appeal.
13. 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 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.”
14. In [Nicholas Kiptoo Korir arap Salat v IEBC & Others](#) [2014] eKLR the Supreme Court stated that:-
  - i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
  - ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court
  - iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
  - iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
  - v. Whether there will be any prejudice suffered by the respondents if the extension is granted
  - vi. Whether the application has been brought without undue delay; and
  - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
15. Judgment was delivered on 28<sup>th</sup> November, 2023 and the present application was filed on 19<sup>th</sup> July, 2024, almost eight months later. The statutory period for filing an appeal lapsed on or about 28<sup>th</sup> December, 2023. The Applicants also averred that they were granted stay by the Trial Court but did not disclose for how long. It therefore follows the Application was filed almost seven months post statutory period.
16. The Applicant’s advocate argued that the delay was because they were not able to get a copy of the judgment on time. The letter requesting for certified copies of the judgment is dated 12<sup>th</sup> April, 2024 about four and a half months after delivery of judgment.
17. The delay in requesting for a copy of judgment is not explained. It is unclear as to when the advocates received instructions from Directline Assurance Ltd or when the client was informed of the terms of judgment. Thereafter from the date of requesting for copies of the judgment, the Applicants then waited another three (3) whole months before filing the instant Application.
18. The Applicants cannot blame the Court for the delay while in fact, contributing to the most delay. Even if the Court took long in getting them the judgment, the months of delay on their part has not been explained to the satisfaction of the Court.



19. I am inclined to reject the Applicants Application for leave to file the intended appeal, noting that, a period of over seven (7) months is inordinate, inexcusable and no good cause has been advanced.
20. As regards stay, without an order enlarging time the stay cannot be granted in vacuity as the basis of the appeal no longer exists.
21. Therefore, the Application dated 19<sup>th</sup> July, 2024 is bereft of merit and is dismissed with no orders as to costs.

It is so Ordered.

**SIGNED, DATED AND VIRTUALLY DELIVERED AT NAKURU THIS 11<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**MOHOCHI S.M**

**JUDGE**

