



**Northwave Credit Limited & 2 others v Kimotho & another (Commercial Appeal E165 of 2023) [2025] KEHC 2370 (KLR) (Commercial and Tax) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2370 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL APPEAL E165 OF 2023**

**PM MULWA, J**

**FEBRUARY 13, 2025**

**BETWEEN**

**NORTHWAVE CREDIT LIMITED ..... 1<sup>ST</sup> APPELLANT  
PETER NJAGI ..... 2<sup>ND</sup> APPELLANT  
MERCY NKIROTE ..... 3<sup>RD</sup> APPELLANT**

**AND**

**SUSAN WANGUI KIMOTHO ..... 1<sup>ST</sup> RESPONDENT  
NATIONAL TRANSPORT AND SAFETY AUTHORITY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling concerns the Notice of Motion dated 11<sup>th</sup> December 2023, filed by the Respondents. In essence, the motion seeks to strike out the Notice of Appeal dated 11<sup>th</sup> July 2023 and the Memorandum of Appeal dated 5<sup>th</sup> December 2023. Additionally, it requests that the trial court file be returned to the lower court for the typing of the proceedings.
2. The Respondent/Applicant contends that the Notice of Appeal and the Memorandum of Appeal were filed outside the statutory timelines, without leave of the court, and therefore warrant striking out.
3. The Appellants opposed the motion through the Grounds of Opposition dated 17<sup>th</sup> January 2024. Their grounds for opposition are that the Memorandum of Appeal dated 5<sup>th</sup> December 2023 was filed pursuant to a Court order issued on 7<sup>th</sup> December 2023. As such, the filing is valid and binding, as the order of 7<sup>th</sup> December 2023 has not been overturned or appealed. They contend that any request to strike out the Notice of Appeal dated 11<sup>th</sup> July 2023 is without merit, as the Memorandum of Appeal has been duly filed. The Appellants further argue that litigation should be allowed to conclude without unnecessary hindrance.



4. The application was argued by way of written submissions which parties filed. The issue for determination is whether the instant application has merit.
5. By an application dated 5<sup>th</sup> December 2023, the Appellants among other prayers sought leave to file the Notice and Memorandum of Appeal out of time. The court, after considering the circumstances of the case, granted leave to the Appellants to file both the Notice and the Memorandum of Appeal beyond the usual time limits, in line with Section 79G of the *Civil Procedure Act*.
6. The Court has the discretion to extend the time for filing upon sufficient cause being demonstrated. The power to extend time is judicial in nature, and the court must exercise it judiciously, considering all circumstances of the case.
7. Given that the court granted leave to file the Memorandum and Notice of Appeal out of time, it follows that both documents are valid. The court's order effectively waived the statutory timelines and allowed the Appellants to file outside the prescribed period. As such, any argument to the effect that the filings are invalid due to non-compliance with the statutory timelines is no longer relevant.
8. I am alive to the fact that where a court order has been made, it should be obeyed unless it is overturned on appeal or set aside by the court (See *The Owners of the Motor Vessel "Lilian S" v. Caltex Oil (Kenya) Ltd* [1989] KLR 1).
9. In light of the foregoing it is clear that the Respondent's application lacks merit and the same is dismissed with costs to the Appellants.
10. I direct the Appellants to file the Record of Appeal within 30 days from the date herein to enable parties to take directions on the appeal.

It is so ordered.

**RULING DELIVERED, DATED AND SIGNED AT NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025.**

**P.M. MULWA**

**JUDGE**

In the presence of:

Mr. Michuki for Appellants

Ms. Kisotu h/b for Mr. Makumi for 1<sup>st</sup> Respondent

Court Assistant: Carlos

