



**Registrar of Companies v Jumbo Commodities Limited & 3
others (Commercial Appeal E257 & E258 of 2024 (Consolidated))
[2025] KEHC 2280 (KLR) (Commercial and Tax) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2280 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E257 & E258 OF 2024 (CONSOLIDATED)
JWW MONG'ARE, J
FEBRUARY 13, 2025**

BETWEEN

REGISTRAR OF COMPANIES APPELLANT

AND

**JUMBO COMMODITIES LIMITED 1ST RESPONDENT
AFRICAN BANKING CORPORATION LIMITED 2ND RESPONDENT
VINCENT NG'ENO CHERUIYOT 3RD RESPONDENT
JACKSON KIMEU 4TH RESPONDENT**

RULING

Introduction and Background

1. On 9th August 2024, the subordinate court, entered judgment for the 1st Respondent against the Appellants (“the Registrar” and “the Bank”) and the 2nd and 3rd Respondents for the sum of Kshs.4,310,065.00/= plus interest and costs of the suit. The Appellants have evinced their intention to appeal against this judgment and they have now filed before the court applications to stay the execution of the judgment pending the hearing and determination of the appeals whereas the Bank also seeks leave of the court to file the appeal out of time.
2. The 1st Respondent has responded to the applications through various affidavits sworn by its director, Piyush Savla. In support of their positions, the parties relied on written and oral submissions by their respective Counsel and together with the pleadings, I will make relevant references to in my analysis and determination below.



Analysis and Determination

3. From the pleadings and submissions, I note that the main issues for the court's determination are whether the court should grant leave for the Bank to file its appeal out of time and whether the court should issue an order staying the execution of the subordinate court's judgment pending the hearing and determination of the appeals.
4. The principles governing leave to appeal out of time are trite and are now well settled. The successful Applicant must demonstrate "good and sufficient cause" for not filing the appeal in time. In *Thuita Mwangi v Kenya Airways Ltd* [2003] KECA 201 (KLR), the Court of Appeal while considering Rule 4 of the Court of Appeal Rules which is similar to section 79G of the *Civil Procedure Act*, that gives the court discretionary power to admit an appeal out of time, reiterated its decision in *Mutiso v Mwangi* [1997] KLR 630 as follows:-

"It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that generally the matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of delay; secondly, the reason for the delay; thirdly (possibly) the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the Respondent of the application is granted."

5. The Supreme Court in the case of *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR) enunciated the principles applicable in an application for leave to appeal out of time by stating as follows:-

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; A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court; Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court; Whether there will be any prejudice suffered by the respondents if the extension is granted; Whether the application has been brought without undue delay; and whether in certain cases, like election petitions, public interest should be a consideration for extending time.'

6. From the record, the Bank filed its appeal on 10th September 2024 which is 31 days after the judgment of the subordinate court was rendered which was 1 day late as per section 79G of the *Civil Procedure Act*. The Bank attributed this lateness to downtime of the Judiciary's portal and it has annexed evidence of the same through photostats of the portal and a follow up email by the Bank to the court's registry expressing the manner in which the portal was unresponsive. I find this explanation to be satisfactory and also find that a delay of 1 day is not inordinate and the Respondents have not been prejudiced in any way. I will thus exercise my discretion in the Bank's favour and grant leave to extend the time for filing its appeal and I deem its Memorandum of Appeal dated 9th September 2024 properly and duly filed.
7. Turning to the applications for stay of execution, the parties agree that the principles that guide the court in an application for stay of execution pending an appeal are grounded in Order 42 Rule 6 (2) of the Rules. In order to succeed, the Applicant must demonstrate substantial loss may result unless the order of stay is made. It must also demonstrate that the application has been brought without undue delay and lastly, the Applicant must give such security as the court may order for the due performance



of the decree or order as the case may be. These principles have been buttressed by decisions of superior courts where it was added that the power to order stay of execution is discretionary and must be exercised in such a way that the appeal is not rendered nugatory and that this discretion is based on the facts and circumstances of each case (see the courts holding in the case of Halai & Another v. Thornton & Turpin [1990] KECA 65 (KLR) and in the case of Butt v Rent Restriction Tribunal [1979] KECA 22 (KLR).

8. I note that the 1st Respondent's Counsel informed the court that he did not object to the order for stay provided the Appellants deposit the decretal sum in court as security which sum he stated now stands at Kshs.8,936,662.00/-. The Appellants did not respond to this but in any case, furnishing of security is mandatory unless the Appellants demonstrate that they are unable to provide the same, which they did not do. In the foregoing, I would be inclined to grant the order of stay of execution on condition that the Appellants deposit the sum of Kshs.8,936,662.00/= in court with each party depositing Kshs.4,468,331.00/=

Conclusion and Disposition

9. In the upshot, the following are the dispositive orders of the court:-
 1. The applications dated 10th September 2024, 19th September 2024 and 24th September 2024 are allowed.
 2. Leave is granted to African Banking Corporation Limited to file its appeal out of time and its Memorandum of Appeal dated 9th September 2024 is deemed to be properly and duly filed and on record.
 3. A stay of execution of the decree from the subordinate court in MCCC No. 3447 of 2015 be and is hereby granted on condition that the Appellants each deposit a sum of Kshs. 4,468,331.00/= in court within 90 days and that the same shall be held by the court for the whole duration of the appeals.
 3. The Records of Appeal should be filed and served within 90 days.
5. If the aforementioned conditions are not met within 90 days from the date of this ruling and in default, the applications shall be deemed to have been dismissed with costs and the 1st Respondent will be at liberty to execute.
6. The costs of the applications will abide the outcome of appeals.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 13TH DAY OF FEBRUARY 2025.

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J.W.W. MONGARE

JUDGE

In the Presence of:-

1. Mr. Muchiri for Jumbo Commodities – the Applicants.
2. Mr. Olembo for ABC Bank - the Respondents.
3. Ms. Akoth holding brief for Mr. Odhiambo for BRS/Registrar of Companies.
4. Amos - Court Assistant

