



**Utafiti Savings and Credit Cooperative Society Limited v Mutuku  
& 9 others (Miscellaneous Commercial Application E844 of 2024)  
[2025] KEHC 1751 (KLR) (Commercial and Tax) (24 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1751 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS COMMERCIAL APPLICATION E844 OF 2024  
JWW MONG'ARE, J  
FEBRUARY 24, 2025**

**BETWEEN**

**UTAFITI SAVINGS AND CREDIT COOPERATIVE SOCIETY  
LIMITED ..... APPLICANT**

**AND**

**TIMOTHY MUTUKU ..... 1<sup>ST</sup> RESPONDENT  
EMILY KERANDI ..... 2<sup>ND</sup> RESPONDENT  
JOSEPH NJOROGE ..... 3<sup>RD</sup> RESPONDENT  
MARY KIRANGU ..... 4<sup>TH</sup> RESPONDENT  
ANGELINE WAFULA ..... 5<sup>TH</sup> RESPONDENT  
ANTHONY SIGEI ..... 6<sup>TH</sup> RESPONDENT  
JEREMIAH ..... 7<sup>TH</sup> RESPONDENT  
PETER GETUGI ..... 8<sup>TH</sup> RESPONDENT  
ANN KIBE ..... 9<sup>TH</sup> RESPONDENT  
JENNIFER WANJIKU KINYANJUI ..... 10<sup>TH</sup> RESPONDENT**

**RULING**

1. On 11<sup>th</sup> October 2024, the Applicant being dissatisfied with the decision of the Co-operatives Tribunal delivered on 28<sup>th</sup> August 2024, filed a Memorandum of Appeal seeking to appeal the said decision on



the grounds set out therein. Alongside the Memorandum of Appeal, the Applicant also filed a Notice of Motion application of even date seeking the following orders:-

- i. Spent
  - ii. That this Honourable Court be pleased to grant the Applicant leave to appeal out of time against the judgment delivered by the Co-operative Tribunal at Nairobi Tribunal Case No. 382 E176 of 2021 ON 29/8/2024.
  - iii. That this Honourable Court be pleased to stay the judgment delivered on 29/8/2024 in Co-operative Tribunal at Nairobi Tribunal Case No. 382 E176 of 2021 together with all its consequential orders, pending the hearing and determination of the intended appeal.
  - iv. That costs of the entire suit and this application be provided for.
2. The Application is supported by the grounds set out on its face and the supporting affidavit of Jane Karanja, the Chairperson of the Applicant, sworn on 11/10/2024. The 10<sup>th</sup> Respondent opposed the application through the sworn affidavit of Jeniffer Wanjiku Kinyanjui.
  3. Pursuant to the directions issued by the court to the parties, the application was canvassed through written submissions. The Applicant filed its written submissions dated 12/11/2024 while the 10<sup>th</sup> Respondents Submissions are dated 6/11/ 2024.

### **Analysis and Determination**

4. I have carefully considered the pleadings and the supporting and replying affidavits sworn by the parties and the rival submissions filed pursuant to the directions of this court. I note that the Applicant seeks leave to file its appeal out of time and also an order staying the execution of the judgment delivered by the Co-operatives Tribunal on 29/1/8/2024. It is therefore the duty of this court to determine if the Applicant has met the threshold set by law for the grant of the orders sought.
5. The Applicant argues that while the Co-operatives Tribunal delivered its judgment on 29/8/2024 ordering that a refund of the sum of Kshs.2,589,957/= be paid to the Respondents, its advocates on record only notified the Applicant of the said decision on 1/10/2024 in Tribunal Case No. 382 E176 of 2021. The said information was relayed to the Applicant after the closure of the 30-day window available in law to any party wishing to appeal against the said decision. The Applicant has attached the correspondence to that effect.
6. The Applicant further argues that it is dissatisfied with the said decision rendered by the Tribunal and wish to appeal the same and have annexed to this application a draft Memorandum of Appeal setting out 8 grounds which it will seek to rely on to overturn the said decision.
7. The 10<sup>th</sup> Respondent has opposed the Application and has filed a replying affidavit setting her grounds of opposition thereto. The Respondent argues that the Application and the intended appeal are frivolous, misconceived, vexatious and otherwise an abuse of the court process. The Respondent contends that it is not enough for a party to blame its advocates on record when they fail to act within the confines of the law. The Respondent's position is that the window for appealing a decision of the Tribunal is 30 days from when the said decision was rendered. The decision upon which the intended appeal is sought to be preferred against was delivered on 29/8/2024 while this application was filed 11/10/2024, way beyond the 30-day window period. The 10<sup>th</sup> Respondent urges the court to dismiss the application and allow the Respondents to enjoy the fruits of their judgment.



8. I have considered the application and the supporting affidavits and the reply filed by the 10<sup>th</sup> Respondent in opposition thereto. I note that the Cooperative *Societies Act*, section 81(1) thereto provides as follows (1) Any party to the proceedings before the Tribunal who is aggrieved by any order of the Tribunal may, within thirty days of such order, appeal against such order to the High Court; Provided that the High Court may, where it is satisfied that there is sufficient reason in so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.”
9. The decision to enlarge time is therefore not automatic but one made on the discretion of the court upon being satisfied that there are sufficient grounds to support the same. In *Paul Musili Wambua VS AG & 2 others*(2015) eKLR, the court of appeal observed as follows:

“.....it is now settled by a long list of authorities by this court that the decision of whether or not to extend the time for filing an appeal the judge exercises unfettered discretion. However, in the exercise of such discretion, the court must act upon reason(s) not based on whim or caprice. In general, the matters which a court takes into account in deciding whether or not to grant an extension of time are; the length of the delay, the reason for delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the Respondent if the application is granted”.
10. In considering whether to extend time for filing of he intended appeal; it is not lost to the court that only the 10<sup>th</sup> Respondent has opposed the Application. The Applicant alleges that the 10<sup>th</sup> Respondent is the principal debtor and the funds sought to be refunded have been recovered from her guarantors, such that if the judgment is satisfied, the principal debt for which the application was filed remains outstanding against her. It is also not lost on the court that the Applicant, being a savings and credit cooperative society, is the custodian of depositors’ funds held on behalf of its members.
11. In making this application, the Applicant contends that it was not aware of the outcome the case against it until the time for filing the appeal had lapsed. The judgment was rendered on 29/8/2024 and the notice of the same was conveyed on 1/10/2024. The Court notes that the Applicant subsequently on becoming aware filed this application within 11 days thereafter. The Court is satisfied that the application was not brought with inordinate delay. The period for filing the Appeal lapsed on 29/9/2024 and this application was filed 11 days thereafter. The court has also had an opportunity to peruse the grounds set out in the draft Memorandum of Appeal. The court is satisfied that the same raises matter of law for consideration at appellate level. In view of the same I am satisfied that the Applicant has made out a case for grant of the order sought for the extension of time to file the intended appeal. That limb of the application is therefore allowed.
12. The second limb of this application is for stay of the execution of the judgment and resultant decree by the Cooperatives Tribunal. Order 42 Rule 6 of the Civil Procedure Rules, 2010, provides as follows:-

“Stay in case of appeal [Order 42, rule 6]

  1. 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.

13. Having allowed the Applicant to file its appeal out of time, the court has to consider if the judgment of the Cooperatives Tribunal and the consequential orders emanating therefrom should be stayed pending the hearing and determination of the Appeal as a clear reading of order 42 rule 6 clearly demonstrates that an appeal does not automatically act as an order of stay. The grounds for which the said orders can be granted are clearly set out in the provisions of the law in the Civil Procedure Rules set out above. There is a judgment already on record in favour of the Defendants. To allow the execution of the same to proceed may result in the appeal being rendered nugatory and the suit being rendered moot. The court is therefore called upon to balance the interest of Applicant with those of the judgment creditors who are anxious to enjoy the fruits of their judgment.

14. Having said so, and in view of the above findings and in the interest of justice, this court will allow the prayer by the Applicant for grant of an order stay of execution pending the hearing and determination of the intended appeal but on condition that the judgment debt of Kshs.2,582,957.00/= be deposited in court within 30 days from the date of this ruling. The same shall be held as security by the court pending the hearing and determination of the intended Appeal.

### **Conclusion and Disposition**

15. In conclusion, I hold and find that thee application dated 11/10/2024 has merit. The same is allowed as prayed. The Applicant’s memorandum of appeal dated 11<sup>th</sup> October 2024 shall be deemed as filed upon payment of the requisite court fees and the deposit of the decretal sum of Kshs.2,589,957/= with the court within 30 days from the date hereof. Costs of this application shall abide the outcome of the appeal. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 24<sup>TH</sup> DAY OF FEBRUARY 2025.**

.....

**J.W.W. MONGARE**

**JUDGE**

In the Presence of: -

1. Ms. Nduu holding Mr. Mwatho for the Plaintiffs /Applicants.
2. Ms. Metto for the 1<sup>st</sup>-9<sup>th</sup> Defendants/Respondents.
3. Ms. Nyambaka for the 10<sup>th</sup> Respondent.
4. Amos - Court Assistant

