



REPUBLIC OF KENYA



Mas Petroleum Contractors EA) Limited & another v Kanyoni (Civil Appeal E666 of 2024) [2025] KEHC 3583 (KLR) (Civ) (21 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3583 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL APPEAL E666 OF 2024**

**JN MULWA, J
MARCH 21, 2025**

BETWEEN

MAS PETROLEUM CONTRACTORS EA) LIMITED 1ST APPELLANT

YUSUF AHMED FAKIR MOHAMMED 2ND APPELLANT

AND

GEORGE WACHIRA KANYONI RESPONDENT

RULING

(On the Preliminary Objection Dated 7th July 2024)

1. By a Notice of Preliminary Objection dated 7th July, 2024 brought under section 7 of the [Civil Procedure Act](#) and Order 3 Rule 4 of the Civil Procedure Rules, the Respondent raised the following objections:-
 1. That the appeal herein is not properly before this Honourable Court as no leave to file out of time was sought by the Applicants.
 2. That the Orders being sought by the Respondents are dependent on an appeal being filed and cannot be sustained as this appeal is not properly before this Court.
 3. That the application filed by the Respondents on 1.07.2024 is subjudice to the application dated 3.6.2024 that is before this Honourable Court.
 4. That the Respondents are not refuting the debt to the 1st Respondent; that even if the appeal was to be admitted there are no grounds to sustain said appeal.
 5. That the said Notice of Motion Application is fatally and incurably defective both in form and procedure.



2. The Appellant's submissions on respondent's preliminary objection are on record. The Respondent has not filed submissions even after confirming to court that they had filed on 30th September, 2024.
3. By the Notice of Motion Application dated 1/7/2024, the Applicants sought extension of time to and restore stay orders of execution orders granted by the court on 4/06/2024 and the sum of shs.200,000/= deposited in court as security outside time allowed by the court be deemed as duly deposited in court with leave of court.
4. Further an order is sought for release of vehicle no. KCE 571J attached on 28/6/2024 with no orders on costs to the Auctioneers, among other orders.

The court record shows that on /8/07/2024, upon arguments by both counsel for the parties, the court made an order for the release of the vehicle, which was confirmed as released on 30/09/2024.

5. Additionally, upon further reading of the court record, it shows that on the same date-30/09/24-, while in the process of his arguments before the court, the Respondents' advocate informed the court that he had filed the Preliminary Objection that very morning. It was obvious that the same could not be heard before it was served upon the Applicant and properly before the court. In any event, as earlier on stated, the applicant had complied with the court orders on depositing security in court pending hearing and determination of the appeal, and the vehicle attached in execution released to the Applicants.
6. In the end, by the above disclosures and confirmation by the Respondent, it is evident that the application dated 1/07/2024 has been overtaken by events, and need no further consideration. It also follows that the Respondents' Preliminary Objection had likewise been overtaken by the said events, and the court would be undertaking an exercise in futility to proceed to determine the merit or otherwise of the same of the Preliminary Objection.
7. The upshot is therefore that the Preliminary Objection dated 7.7.2024 is struck out with no orders on costs.

The applicants are granted leave to file their appeal out of time, with the Memorandum of appeal being filed within 7 days of this ruling, and the Record of Appeal within 60 days.

Matter to be placed before the Deputy Registrar for further directions on the appeal on 22/05/2025.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 21ST DAY OF MARCH, 2025.

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JANET MULWA.
JUDGE

