



REPUBLIC OF KENYA



**Multiline Services Limited v Nairobi City County Government (Judicial Review Application E042 of 2025) [2025] KEHC 2484 (KLR) (Judicial Review) (12 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2484 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW APPLICATION E042 OF 2025  
RE ABURILI, J  
MARCH 12, 2025**

**BETWEEN**

**MULTILINE SERVICES LIMITED ..... APPLICANT**

**AND**

**NAIROBI CITY COUNTY GOVERNMENT ..... RESPONDENT**

**RULING**

1. On 28<sup>th</sup> January 2025, in JR No. E017 of 2025, this court granted leave to the applicant herein Multiline Services Limited to apply for Judicial review orders of mandamus to compel the respondent Nairobi City County Government to settle balance of decree rendered on 1/7/2019 in Milimani Chief Magistrates Commercial Court Case No. 6004 of 2016.
2. The Court also directed that the substantive Notice of motion be filed and served within twenty-one days of the date of the order for leave.
3. On 20<sup>th</sup> February 2025, the *ex parte* applicant filed the substantive notice of motion in this matter and this court noted that the motion had been filed out of the 21 days granted by the court.
4. Counsel for the *ex parte* applicant, Mr Munikah requested for time to rectify the situation and was granted 14 days.
5. Before me for determination therefore, is a Notice of motion dated 6<sup>th</sup> March, 2025 argued this morning, seeking for enlargement of time within which the substantive notice of motion ought to have been filed and to deem the notice of motion filed out of time as duly filed. The application is supported by the affidavit sworn by counsel for the applicant Mr. Samson Masaba Munikah who deposes inter alia, that before the leave was granted, on 14<sup>th</sup> January 2025, he had travelled out of the country to attend to his then ailing daughter Viola Ranginya who subsequently died in Dubai on 17<sup>th</sup> January



2025 necessitating him to remain and attend her cremation ceremony on 20<sup>th</sup> January 2025 before returning to Kenya on 18<sup>th</sup> January 2025 and remained in a state of mourning and confusion during the period that leave was granted to apply hence the oversight in filing the application in time. He annexed copy of the memorial funeral announcement of his late daughter as it appeared in the Sunday Nation January 2025.

6. I have considered the application as presented and argued orally. The issue for determination is whether the application is merited and if so, what orders to make.
7. The question of whether this court has residual jurisdiction to enlarge time for filing of the substantive notice of motion in judicial review proceedings brought under Order 53 of the Civil Procedure Rules has been subject of many decisions including Republic v Public Procurement Administrative Review Board Ex-parte Syner- Chemie Limited [2016] eKLR. In that case, the court granted to the applicant ten days for the filing of the substantive notice of motion. The motion was not filed. The applicant, like in the instant case, returned to court seeking for enlargement of time to file the substantive notice of motion and the question that arose in the much hotly contested application was whether the court retained any residual power to enlarge that time as fixed by the Court.
8. In answering that question, this court in the above case cited the Court of Appeal decision in the case of Caltex Oil (K) Limited v Rono Limited - Civil Appeal/Application No. 97 of 2008 (unreported) where the Court of Appeal considered the jurisdiction of the Court to extend time fixed by the Court even where there is a default clause and opined as follows:

“However, the fact that a default clause has been imposed by a court does not necessarily deprive a court of its jurisdiction to extend time. As a general principle, where the court fixes time for doing a thing, it always retains power to extend time for doing the act until it has made an order finally disposing of the proceedings before it. It seems that the main test is whether the Court still retains control of the order, notwithstanding that there has been default. That would necessarily depend on the true construction of the default clause.”

9. This court in the above Ex-parte Syner- Chemie Limited observed that the court by granting 10 days out of the stipulated 21 days and on the above decisions considered, found that, in the interest of justice, it still retained the control of the order, to enlarge time in the event of default. I further relied on the Court of Appeal in Syombua Muli Mutuva v Charles A.K. Mulela [2014] eKLR applied the above Caltex Oil (K) (supra) case where it was held, applying section 59 of the Interpretation and General Provisions Act Cap 2 Laws of Kenya that:

“The Court is not functus officio as regards the default clause and therefore, has power to extend time notwithstanding the wording of the default clause.”

10. The provisions of Section 95 of Civil Procedure Act, Section 59 of Interpretation and General Provisions Act Cap 2 as well as Order 50 Rule 6 of the Civil Procedure Rules are clear that such application for enlargement of time granted by the Court can be made even after expiry of the period of doing any act or taking the proceeding for which leave was granted.
11. In Gateway Insurance Company Ltd v Avies Auto Sprays [2011] e KLR the Court of Appeal cited with approval several cases including Periagami Asari V Illupur Penchayert Board AIR 1973 Mad 250 dealing with the Rule identical to Order 50 Rule 6 of the Civil Procedure Rules where it was held that:

“The principle that when the effect of the order granting time in the event of non compliance has to operate automatically the court has no power to extend time as it becomes functus



officio, will apply when the suit is finally disposed of. If the order is not final and the court retains control over it and seized of the matter, it will have power to extend time.”

12. In *Gogardhan v Barsati* AIR 1972 ALL 246, dealing with similar provision to Order 50 Rule 6 of *Civil Procedure Rule*, it was held that:

“Even in cases where an order is made by the court for doing a thing within a particular time and the order further provide that the application, a suit or appeal shall stand dismissed, if the thing is not done, within the time fixed, the court has jurisdiction, if sufficient cause is made out, to extend the time even when the application for extension of time is made after the expiry of the time fixed. It is not the application for grant of further time, whether made before or after the expiry of the time granted, which confers jurisdiction on the court.”

13. I am further fortified by the Court of Appeal decision in the case of *Wilson Osolo v John Ojiambo Ochola & the Attorney General* CA No. 6 Nairobi of 1995 where the Court while considering whether the court has power or jurisdiction to enlarge time stipulated under Order 53 of the *Civil Procedure Rules* stated as follows:

“As can readily be seen that Order 53 Rule 2 (as it then stood) is derived verbatim from Section 9(3) of the *Law Reform Act*. Whilst the time limited for doing something under the Civil Procedure Rules can be extended by an application under Order 49 of the Civil Procedure Rules, the procedure cannot be availed of the extension of time limited by statute, in this case, the *Law Reform Act*.”

48. In the same judgment, the Court of Appeal stated:

“It was a mandatory requirement of Order 53 Rule 3(1) of the Civil Procedure Rules then (and it is now again so) that the notice of motion must be filed within 21 days of grant of such leave. No such notice of motion having been apparently filed within 21 days on 15<sup>th</sup> February 1985 there was no proper application before the Superior court. This period of 21 days could have been extended by a reasonable period had there been an application under Order 49 of the Civil Procedure Rules.”

14. The above decision was considered by this Court in *Republic v Speaker of Nairobi City County Assembly & another Ex parte Evans Kidero* [2017] eKLR wherein this court observed that the judgment was delivered by the Court of Appeal on 6<sup>th</sup> August 1996 when the provisions of Order 49 of the *Civil Procedure Rules* were in force and after amendments in 2010, it is now Order 50 Rule 6 of the *Civil Procedure Rules*, which permit the enlargement of time stipulated by the rules or set by the order of the court.

15. In Miscellaneous Civil Application 12/2014 *Republic Vs General Manager, Moi International Airport & Another Ex parte Jared Adimo Odhiambo & Another* [2014] e KLR, the court emphasized the need to place Order 53 Rule 3 of the *Civil Procedure Rules* in consistency with Article 159 principle that justice should be administered without due regard to procedural technicalities and therefore that the court should invoke its inherent powers to extend time to achieve substantive justice, with the court holding that the court has power to enlarge the 21 days period stipulated in Order 53 Rule 3 of the *Civil Procedure Rules*.

16. In the instant case, the application ought to have been filed by 18<sup>th</sup> February 2025. It was instead filed on 20/2/2025. From the depositions by counsel, he had lost his daughter in Dubai and was in a state



of mourning hence the filing of the motion within 21 days granted by the court and as stipulated in Order 53 (3) (1) of the *Civil Procedure Rules* escaped his mind.

17. That explanation in my view is plausible. The delay was of two days and the motion is already filed hence no prejudice will be occasioned to the respondents if the court enlarges the time as prayed and deem the application as duly filed.
18. Accordingly, I find the application as filed merited. I grant the orders enlarging time within which the substantive notice of motion ought to have been filed and deem the filed notice of motion dated as duly filed. The applicant to serve the respondents with the said application within 7 days of today upon which the respondent shall have seven days from the date of service to file and serve a replying affidavit to the substantive notice of motion. Mention on 31/3/2025 for inter partes directions on the mode of hearing of the substantive notice of motion.
19. There shall be no orders as to costs of the application as allowed.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12<sup>TH</sup> DAY OF MARCH, 2025.**

**R.E. ABURILI**

**JUDGE**

