



Insurance Regulatory Authority v Monarch Insurance Company Limited (Appeal E285 of 2024) [2025] KEHC 4719 (KLR) (Commercial & Admiralty) (10 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4719 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY**

APPEAL E285 OF 2024

PM MULWA, J

APRIL 10, 2025

BETWEEN

INSURANCE REGULATORY AUTHORITY APPELLANT

AND

MONARCH INSURANCE COMPANY LIMITED RESPONDENT

(Being an appeal against the Judgment of the Insurance Appeals Tribunal delivered on 28th August 2024)

RULING

1. The court is seized of a Notice of Motion dated 23rd September 2024, brought by the Appellant invoking Order 42 Rule 6 of the Civil Procedure Rules and Sections 1A, 1B, 3A and 63(e) of the *Civil Procedure Act*, seeking orders, inter alia, for a stay of proceedings in Insurance Appeals Tribunal Appeal No. 1 of 2024 pending the hearing and determination of this appeal.
2. The Application is supported by the affidavit of Godfrey Kiptum sworn on 23rd September 2024. The crux of the application is that the Insurance Appeals Tribunal admitted an appeal beyond the statutory period of 30 days, contrary to the law, and that the Tribunal had no jurisdiction to extend time.
3. The Respondent opposes the application through a replying affidavit sworn by Rosemary Kangwana on 16th October 2024, asserting that the Tribunal had jurisdiction to extend time and that the application is misconceived, defective and an impediment to the Respondent's right to justice under Article 48 of *the Constitution*. She contends that the Appellant has not demonstrated exceptional circumstances warranting stay of proceedings, thereby necessitating dismissal of the Application with costs to the Respondent.



4. The Respondent also filed a Preliminary Objection dated 15th October 2024, raising the following grounds:
 - a. The High Court lacks jurisdiction under Section 173(3) of the *Insurance Act* to entertain appeals against interlocutory decisions of the Tribunal not arising from a decision of the Commissioner.
 - b. Leave to appeal was neither sought nor obtained.
 - c. The application is brought under Order 42 Rule 6(1), which requires that the application for stay of proceedings be first made before the Tribunal.
 - d. The application is incompetent and fatally defective.
5. Both parties filed submissions, with the Appellant filing on 23rd December 2024 and the Respondent on 27th January 2025. I have carefully considered the Notice of Motion, the Preliminary Objection, the affidavits on record, the submissions by counsel and the applicable law. I frame the issues for determination as follows:
 - i. Whether this Court’s jurisdiction is ousted in view of the provisions of Section 173(3) of the *Insurance Act*.
 - ii. Whether the Applicant has met the threshold for stay of proceedings.
6. On the first issue, the Respondent challenges the jurisdiction of this Court under Section 173(3) of the *Insurance Act*.
7. It is well settled that jurisdiction is the cornerstone of any judicial proceedings (Owners of the Motor Vessel “Lilian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1) - “...jurisdiction is everything...without it, a court must down its tools.” This Court must therefore first determine whether it has jurisdiction to entertain the present application.
8. A court’s jurisdiction flows from either *the Constitution* or legislation or both. A court cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law (see Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & 2 others (2012) KESC 8 (KLR)).
9. Section 173 of the *Insurance Act* stipulates that only decisions of the Insurance Appeals Tribunal, arising from appeals against decisions of the Commissioner, are subject to appeal before the High Court, thus:
 1. A person aggrieved by a decision of the Commissioner under this Act may, within one month from the date on which the decision is intimated to him, appeal to the Tribunal which may, subject to such terms and conditions as it may consider necessary, uphold, reverse, revoke or vary that decision.
 2. Except as provided in this section the decision of the Tribunal on an Appeal made to it under subsection (1) shall be final and conclusive.
 3. A person aggrieved by a decision of the Tribunal made under subsection (1) may, if it involves a question of law, within one month from the date on which the decision is intimated to him, appeal therefrom to the Court.
 4. ...



10. The decision being challenged concerns an application for an extension of time to file an appeal. This was an interlocutory procedural decision, not one arising from an appeal against the Commissioner's determination. Section 173 of the *Insurance Act* expressly limits the appellate jurisdiction of this Court to decisions of the Insurance Appeals Tribunal that stem from appeals against the Commissioner's determinations. There is no statutory provision granting this Court jurisdiction to entertain an appeal from an interlocutory procedural ruling of the Tribunal. Accordingly, I concur with the Respondent that the appeal does not fall within the category of appeals contemplated under Section 173(3) of the *Insurance Act*.
11. Furthermore, Section 75(1) of the *Civil Procedure Act*, read together with Order 43 Rule 1 of the Civil Procedure Rules, require that an appeal from an interlocutory decision be filed only with leave of the court. In this case, the Appellant did not seek leave before filing the appeal.
12. The Court of Appeal in *Peter Nyaga Muvaka v Joseph Mutunga* [2015] KECA 475 (KLR) underscored that where leave is required but not obtained, the appeal is incompetent and must be struck out. Applying this principle to the present case, the failure to obtain leave renders the appeal fatally defective.
13. The application for stay of proceedings is brought under Order 42 Rule 6 of the Civil Procedure Rules. This provision expressly requires that an application for stay should first be made before the court or tribunal from which the appeal originates, unless it is demonstrated that such an application was denied or could not be made.
14. In *Re Global Tours & Travel Ltd* [2000] eKLR, the Court held that

“the jurisdiction of the High Court to stay proceedings pending appeal should only be exercised where the lower court or tribunal has first been approached.”

In the present matter, there is no indication that the Appellant sought a stay of proceedings before the Tribunal prior to filing the present application. Accordingly, the application is premature and improperly before this Court.
15. From the foregoing, it is evident that the Preliminary Objection is well-founded. This Court lacks jurisdiction to entertain both the application and the appeal. Consequently, the appeal and the application must be struck out.
16. Having determined that this Court lacks jurisdiction, it is unnecessary to delve into the merits of the application for a stay of proceedings. However, even if jurisdiction existed, the Applicant has not demonstrated exceptional or sufficient cause to justify the stay sought, as required in *Kenya Power & Lighting Co. Ltd v Esther Wanjiru Wokabi* [2014] KEHC 3174 (KLR). The principles governing the grant of a stay include:
 - a. That the appeal raises serious triable issues;
 - b. That substantial loss would occur if the stay is not granted; and
 - c. That the application was made without unreasonable delay.
17. Applying these principles, the Applicant has neither demonstrated the arguability of the appeal nor provided sufficient justification for granting a stay. After all, the mere fact that an appeal is pending does not automatically warrant a stay of proceedings. Article 159(2)(b) of *the Constitution* of Kenya underscores that justice shall not be delayed. Article 48 thereof guarantees the right to access justice. Granting a stay in these circumstances would unjustly impede the Respondent's right to the expeditious determination of the dispute.



18. In view of the foregoing, I make the following orders:

- a. The Preliminary Objection dated 15th October 2024 is hereby upheld;
- b. The Notice of Motion dated 23rd September 2024 and the appeal herein are struck out for want of jurisdiction;
- c. Costs are awarded to the Respondent.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 10TH DAY OF APRIL 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Kihima h/b for Mr. Mueke for Appellant

Mr. Owiti for Respondent

Court Assistant: Kadzo

