



REPUBLIC OF KENYA



KENYA LAW
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Ngugi v Commissioner for Co-operative Development & another (Civil Appeal E1096 of 2023) [2025] KEHC 4197 (KLR) (Civ) (1 April 2025) (Judgment)

Neutral citation: [2025] KEHC 4197 (KLR)

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

CIVIL

CIVIL APPEAL E1096 OF 2023

LP KASSAN, J

APRIL 1, 2025

BETWEEN

JOHN MWANGI NGUGI APPELLANT

AND

**COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT ... 1ST RESPONDENT
ORIENT SAVINGS AND CREDIT CO-OPERATIVE SOCIETY
LIMITED 2ND RESPONDENT**

(Being an appeal from the judgment of the Co-operative Tribunal in Tribunal Misc Application no. E013 of 2022 delivered on 21st September 2023)

JUDGMENT

1. The Appellant challenges the Tribunal's decision to:
 1. Deny leave to appeal out of time against the surcharge orders dated 3rd July 2019.
 2. Deny stay of proceedings in CTC No. 127 of 2021.
 3. Rule on the substantive issues surrounding the surcharge.
2. The appeal is premised on the argument that the Tribunal erred in law denying the Appellant due procedure.

Issues for Determination

1. Whether the Co-operative Tribunal had jurisdiction to grant leave to appeal out of time under Sections 74 and 81 of the *Co-operative Societies Act*.



2. Whether the Tribunal erred in entertaining substantive questions regarding the surcharge despite the absence of a valid appeal.
3. Whether the Tribunal misapplied the principles governing stay of execution under Order 42 Rule 6 of the Civil Procedure Rules.

Jurisdiction to Grant Leave to Appeal Out of Time

3. Section 74(1) of the *Co-operative Societies Act* stipulates that an appeal from the Commissioner's surcharge orders must be filed within 30 days. The Act does not grant the Co-operative Tribunal any jurisdiction to enlarge this period. Jurisdiction is a creation of statute and cannot be inferred or assumed. As was held in *Gerald M'limbine v Joseph Kangangi* [2009] eKLR, a subordinate tribunal cannot extend time where the statute is silent.
4. Section 81, provides jurisdiction for appeals to the High Court, not for the Tribunal to extend time. Thus, the Tribunal correctly declined to enlarge time for appeal.

Without leave duly granted by the High Court under Section 79G of the *Civil Procedure Act*, no valid appeal existed. The Tribunal, therefore, had no authority to entertain any substantive issue arising from the surcharge

Determination of Substantive Surcharge Issues by the Tribunal

5. Once the Tribunal found it had no jurisdiction to grant leave to appeal out of time, it was bound to down its tools. It erred by making pronouncements on the legality or fairness of the surcharge orders. The Appellant filed a miscellaneous application for the orders instead of filing the application in the substantive case CTC 127 of 2021. Any discussion on whether the Appellant was served, or whether his right to a fair hearing under Article 50 of *the Constitution* was violated, could only properly be raised before the High Court in a judicial review application or a competent appeal filed within time. The Tribunal's engagement with these matters was ultra vires and must be disregarded.

Application for Stay of Proceedings

6. The Tribunal denied stay, citing delay and lack of a competent appeal. Indeed, where no valid appeal lies, no interim orders such as stay of proceedings can be issued. An application for stay must be grounded on a pending, arguable appeal. In this case, since leave had not been granted to appeal out of time, no competent appeal existed. Therefore, the application for stay was properly dismissed.

Conclusion and Disposition

7. The Appellant's grievance lies not in the merits but in the procedural fatality of approaching the Tribunal instead of the High Court for leave. The Co-operative Tribunal had no jurisdiction to enlarge time under the *Co-operative Societies Act*. It also could not adjudicate on the merits of the surcharge or issue orders for stay in a matter not properly before it.

Accordingly, the appeal is devoid of merit.

Orders

1. The appeal is hereby dismissed in its entirety.
2. The Appellant shall bear the costs of this appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 1ST DAY OF APRIL 2025.



LINUS P. KASSAN

JUDGE

In the presence of:-

Thuo for Appellant

Mathenge for 1st Respondent

Carol – Court Assistant

