



Emirates Sky Cargo v Paragon Electronics Limited (Miscellaneous Civil Application E596 of 2022) [2025] KEHC 6826 (KLR) (Civ) (22 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6826 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E596 OF 2022**

NW SIFUNA, J

MAY 22, 2025

BETWEEN

EMIRATES SKY CARGO APPLICANT

AND

PARAGON ELECTRONICS LIMITED RESPONDENT

RULING

1. This ruling is on this Application that is dated 4th October 2022. The same has sought the following orders:
 1. Spent.
 2. An order for a Stay of Execution in Nairobi CMCC. No. 995 of 2011 pending the hearing and determination of an intended Appeal.
 3. Leave to Appeal from the ruling delivered in that suit on the 4th Day of February, 2022.
 4. An order a stay of all proceedings pending the hearing and determination of the intended Appeal.
 5. That the Memorandum of Appeal Annexed hereto be deemed as duly filed and served within time.
2. The Applicant who was a party in the said Nairobi CMCC No. 995 of 2011 and who was dissatisfied with that Court's ruling of 4th February 2022 (Hon. M. W. Murage, Senior Resident Magistrate), did not Appeal the decision within the stipulated 30 days. He is by this Application principally seeking leave to Appeal the said ruling. The Ruling was delivered in February 2022 and this Application was



filed in October 2022; that is eight months after. He is also seeking stay of further proceedings in that suit in the trial court until the intended Appeal is heard and determined.

3. To support that plea, the Applicant has annexed to this Application a draft Memorandum of Appeal for the intended Appeal; and which Memorandum it is in prayer (5) of the Application seeking be deemed as duly filed and served.
4. The Respondent has opposed this Application and raised a Preliminary Objection, on grounds that the Application is not only defective but was also filed after an inordinate delay.

Determination

5. I have considered the Application, its Supporting Affidavit as well as the response by Respondent. The Application having been argued orally I have also considered the oral submissions of each party.
6. Notably, also, although this Application as drafted seeks leave to Appeal, the Applicant's Advocate at the oral hearing changed course and argued for leave to appeal out of time. Thereby cleverly attempting to amend or panel-beat the Application through the backdoor and pull a rug under the Court and the Respondent. This Court cannot permit this, as a party is bound by its pleadings; hence no party shall at the hearing of a suit or Application be allowed to argue outside what it has already pleaded.
7. For an Application no party may argue new or further grounds outside the ones stated in the body of the Application. Neither may it urge reliefs different from the ones sought in the prayers in the Application. Unfortunately, this is what the Applicant attempted at the oral hearing of the Application.
8. Upon considering the oral submissions by both parties, as well as the proceedings in the primary suit in the trial Court, I find that the ruling to be appealed is an Order 40 one (Order 40 of the [Civil Procedure Rules](#)). Which is an Order from which there is an automatic right of Appeal, and no leave to appeal is required. Even in circumstances where leave is required, it cannot be sought eight months after the date when the ruling was delivered. Therefore, that leave cannot avail.
9. As for the prayer to deem the Memorandum of Appeal as properly filed, that prayer is in my view ludicrous and idle. It is an invite I have no difficulty in politely declining. In litigation, parties are expected to be diligent enough to just do what they are supposed to do. The now notorious habit of parties acting outside the law and thereafter urging the court to deem as done or properly done, that which they have failed to do or improperly did, is a reckless trajectory that courts should neither suffer nor embrace. Diligence is one of the law's golden eggs.
10. For the foregoing reasons and the spirited opposition put up by the Respondent, this Application was dead on arrival and I have no difficulty in dismissing it. I therefore hereby dismiss it, with costs

DATED AND DELIVERED AT NAIROBI ON THIS 22ND DAY OF MAY 2025.

PROF (DR) NIXON SIFUNA

JUDGE

