Mutuku v Nicco Movers Limited & another (Miscellaneous Civil Application E816 of 2024) [2025] KEHC 7341 (KLR) (Civ) (22 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7341 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

MISCELLANEOUS CIVIL APPLICATION E816 OF 2024

NW SIFUNA, J

MAY 22, 2025

BETWEEN

MICHAEL KATHUSYA MUTUKU ..... APPLICANT

AND

NICCO MOVERS LIMITED ..... 1ST RESPONDENT

EMMANUEL WALUSUNA WASWA ..... 2ND RESPONDENT

RULING

1. This is an Application for leave to Appeal out of time, against the judgment that the Small Claims Courtdelivered on 14th December 2023, in NBI Small Claims Court Case No E4434 of 2023.

2. The Application which is dated 6th September 2024 and is supported by the Applicant's Supporting Affidavit sworn on even date, and is based on the grounds stated in it, has cited Order 50 Rule 6 and Order 42 Rule 6 (1) of the *Civil Procedure Rules*, as well as Sections 3A, 63 and 95 of the *Civil Procedure Act* Cap 21 Laws of Kenya. To it is annexed the said judgment of the trial Court, as well as a draft Memorandum of Appeal.

3. The Respondents opposed the Application through their Grounds of Opposition dated 5th February 2025. In which they have stated that the delay was inordinate and unreasonable, and has not been satisfactorily explained. The Application was argued orally; with each party urging its position, and citing legal authorities.

Analysis and Determination.

4. This is a rather straight-forward Application in which this Court has been called upon to decide only one thing. Namely, whether on the legal provisions, legal principles and facts stated in it, this Court should grant leave to the Applicant, leave to appeal the subject judgment of the trial court.

5. Upon considering the Application, the response to it as well as the rival submissions of the parties, I find that the reason given for the delay, is neither satisfactory nor convincing. Which is that the Applicant lost his phone, around the time the ruling was being delivered, and while he was away from his station; and in a very remote part of Kenya.

6. While this on first thought sounds quite alarming, on second thought the coincidence is so unconvincing, and the kind of misadventures you read about in fairy tales and children comedy series. Besides, losing a phone for a short period of time cannot justify a delay of a whole nine months.

7. To be satisfactory the explanation has to not only be convincing, but should also be proportionate to the duration of the delay; in such a way as to account for the entire or substantial period of the delay.

8. For the explanation offered for the delay to be described as reasonable, the explanation should essentially cover the whole period of the delay, or at the very least, a substantial part of the period. Not just partially; and the explanation offered by the Applicant ought to be what an objective bystander would describe as a reason rather than an excuse.

9. Additionally, the delay should not be a prolonged one, and it ought to be the logical consequence of the delay. There ought to be a logical, proximate and legitimate nexus between that delay, and the proffered event or occurrence or circumstance. It ought not to be too remote or far-fetched.

10. I am of the persuasion that leave should be granted, only where the delay is not inordinate and has been explained and is excusable. In this case a delay of nine months is not only long, but prolonged and unacceptable. The delay by the Applicant in conceiving the idea of appealing and deciding to pursue it, was such. Hence not only amounting to scapegoating, but was unreasonable even in the circumstances explained by the Applicant.

11. For my describing the delay as prolonged and unacceptable, this Application was made on 6th September 2024 and is seeking leave to Appeal out of time against a judgment delivered on 14th December 2023; a whole nine months after. Moreover, the circumstances explained by the Applicant can only account for a few days; and no evidence has been given of the non-availability of the Applicant or of any incapacity on his part.

12. The Applicant's decision to appeal, is clearly an afterthought that came so late in time. Besides, the reasons cited for the delay, cannot suffice as ground for granting the leave sought. Consequently, this Application deservedly fails, hence is hereby dismissed with costs.

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

PROF (DR) NIXON SIFUNA

JUDGE