**Ahmed v Safari Stationery (K) Limited (Commercial Appeal E012 of 2025) [2025] KEHC 8714 (KLR) (Commercial and Tax) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8714 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**COMMERCIAL AND TAX**

**COMMERCIAL APPEAL E012 OF 2025**

**JWW MONG'ARE, J**

**JUNE 13, 2025**

**BETWEEN**

**ZEIN MOHAMED AHMED ..... APPELLANT**

**AND**

**SAFARI STATIONERY (K) LIMITED ..... RESPONDENT**

**RULING**

1. On 17th January 2025 and by an application filed under a certificate of urgency the Appellant/ Applicant moved this Honourable Court under Sections 1A, 1B, 3A and 79G of the *Civil Procedure Act*; Order 42 Rule 6, Order 50 Rule 6, Order 51 Rules 1, 3 and 4 of the Civil Procedure Rules seeking the following Orders:-

    1. Spent

    2. Spent

    3. Leave be granted to the Appellants to file a memorandum of appeal out of time from the ruling and consequential orders of Hon B. M Cheloti(PM) delivered on 23rd June 2023 in Milimani Commercial Courts Civil Suit No. 5843 of 2017; Safari Stationers (K) Limited versus KAAB Investments Limited and/or a stay of execution of the ruling and consequential orders of the Hon. B. M Cheloti (PM) delivered on 23rd June 2023 pending the hearing and determination of the appeal.

    4. The costs of this application be provided for.

2. The application is supported on the grounds set out on its face and the supporting affidavit of Zein Mohammed Ahmed. It is opposed and the Respondents have filed a replying affidavit sworn by Nikhil

Salva on 5th February 2025. Both parties have filed written submissions on the directions of this Honourable Court which I have carefully considered.

3. The Applicants have filed the present application seeking two separates albeit connected reliefs; one is to stay the proceedings in CMCC No. 5843 of 2017; Safari Stationers (K) vs KAAB Investments Limited and; two, is to stay the execution of the decree resulting from the ruling of the Court issued on 23rd June 2023. The Applicants argue that they were not parties to the above suit and that orders emanating from the same issued by the court adversely affect them as they require the applicant to settle a decree of Kshs.9,513,979.61. They are seeking the stay of the proceedings and/ or execution of the said decree alongside urging the court to enlarge the time within which they can file an appeal before this court to challenge the said ruling. They have annexed to their pleadings a draft Memorandum of Appeal an urge the court to allow the same to be deemed as filed once the time to file the said appeal is enlarged.

4. What therefore emerges for determination is three questions; to wit; (1) whether the applicant have established a case for this court to enlarge time to allow them to file an appeal outside the timelines set by the court; (2) if the court allows the first request to allow the filing of the intended appeal outside the timelines set out by the law, whether this court should stay the proceedings in CMCC No. 5843 of 2017; and (3) Whether this court should stay the execution of the decree emanating from the ruling of the court of 23rd June 2023.

5. It is instructive therefore for this court to consider the first issue as to whether the Applicants have made out a case for enlargement of the time for filing of the intended appeal, as a negative determination of this issue may render the other two identified issues inconsequential.

6. Section 79 of the *Civil Procedure Act* provide as follows on filing of appeals from a subordinate court's decision:-

> " 79G. Time for filing appeals from subordinate courts
>
> Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:
>
> > Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time."

7. Oder 50 Rule 6 of the Civil Procedure Rules give the court the power to enlarge time for filing an appeal or a motion before the court; it provides as follows;

> " 6. Power to enlarge time [Order 50, rule 6]
>
> Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the

application for the same is not made until after the expiration of the time appointed or allowed:

> Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise."

8. Both parties have urged the court to be guided by the Supreme Court decision in the case of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others (2014) eKLR; where the Supreme Court laid down the principles that should be considered by a court in the exercise of the discretion to extend time;

   a. Extension of time is not a right of a party. It is an equitable remedy that is only available toa deserving party at the discretion of the court;

   b. The party who seeks for extension of time has the burden of laying to the satisfaction of the court;

   c. As to whether the court should exercise the discretion to extend time, is a consideration to be made on a case-by-case basis.

   d. Whether there is a reason for the delay. The delay should be explained to the satisfaction of the court;

   e. Whether there will be any prejudice to be suffered by the Respondents if the extension is granted;

   f. The application should have been brought without undue delay; and;

   g. In certain cases, like election petitions, public interest should be a consideration for extending time.

9. It is not in dispute that the ruling for which the Applicants seek enlargement of time to appeal from was delivered by the magistrate's court on 23rd June 2023 while this application was filed on 17th January 2025. It is true that the Supreme Court in its decision did not demand that all the eight parameters must be present for the court to enlarge time. Key however, is that the explanation of the delay and the need to seek to extend time must be one that the court finds merited. I have looked at the explanation by the Applicants for delay in bringing the appeal against the impugned ruling. I note that both parties agree that the time granted by the law to bring an appeal as envisioned in section 79G is 30 days. The Applicants argue that since they were not parties to the suit from whence the ruling emanated, they were not made aware on the adverse ruling until the 19th September 2024 and argue that for them, the court should find that the 30-day period would commence when their advocates were supplied with a copy of the ruling on 21st November 2024.

10. On the other hand, the 3rd applicant has admitted having participated in the primary suit when the Notice of Motion dated 18th January 2019 was filed but argues that he became aware of the Notice to Show cause on the 19th September 2024. The Respondents in opposing this application have urged the court to find that the Applicants are underserving of the orders sought and that a delay of over 15 months is inordinate by any standards. Indeed, the Respondents confirm, and the same has not been controverted that the Applicants, being the directors of the Defendant in the primary suit were all along aware of the suit in the magistrates' court that was filed way back in 2017 and they cannot be heard to say that they only learnt of the adverse court orders in 2024. They were duly served with the Notice for examination of directors of the Defendant and the 3rd Defendant went ahead, with representation of

legal counsel to file an affidavit of means of the Defendant/Judgement debtor in the said suit. Indeed, the 3rd Defendant has admitted to having participated in the said application and does not deny or controvert the assertion by the Respondents that at the conclusion of the said matter and when the court granted the adverse orders, he sought time to have the matter amicably settled. It is their position that it is not true that the Applicants were not accorded an opportunity to be heard.

11. Having carefully considered the application before this court, I agree with the Respondents that the Applicants are undeserving of the orders sought. I find that the Applicants have not adduced sufficient grounds to warrant this court to exercise its jurisdiction and grant the order sought for enlargement of time. Consequently, I find no reason to consider the two other issues identified by the court as the same are only available where an appeal has been filed, and none has been filed so far. In sum, I find the present application is without merit and I dismiss the same with costs to the Respondent. It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF JUNE 2025**

**.....**

**J.W.W. MONGARE**

**JUDGE**

In the presence of:-

1. Mr. Mugambi for the Appellant/Applicant.

2. Mr. Muchiri for the Respondent.

3. Amos - Court Assistant