



REPUBLIC OF KENYA



Kariuki & another v Paramount Bank Limited; Sichuan Huashi Enterprises Limited & another (Interested Parties) (Commercial Case E690 of 2021) [2025] KEHC 8635 (KLR) (Commercial and Tax) (13 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8635 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E690 OF 2021
JWW MONG'ARE, J
JUNE 13, 2025**

BETWEEN

ALICE WANJIKU KARIUKI 1ST PLAINTIFF

AFRICA BEL AIR LIMITED 2ND PLAINTIFF

AND

PARAMOUNT BANK LIMITED DEFENDANT

AND

SICHUAN HUASHI ENTERPRISES LIMITED INTERESTED PARTY

SAROHINDI INVESTMENT LIMITED INTERESTED PARTY

RULING

1. By the court's ruling dated 13th May 2024, the court declined the Plaintiffs' application that sought leave of the court to appeal against the ruling of the court (the late Majanja J.,) dated 17th August 2023("the Ruling"). The Plaintiffs have now filed the application dated 20th May 2024 seeking leave to appeal against the Ruling and that the Notice of Appeal of the same date be deemed as duly filed. This application is supported by the grounds on its face and the 1st Plaintiff's supporting and further affidavits sworn on 20th May 2024 and 11th July 2024 respectively. It is opposed by the Defendant ("the Bank") through the replying affidavit of its Legal Consultant, Timothy Kimani sworn on 12th June 2024. The parties have also filed written submissions in support of their respective positions, which I have carefully considered together with the pleadings and I will be making relevant references to the same.



2. As I stated in the said Ruling, section 75 of the *Civil Procedure Act* and Order 43 rule 1 of the Civil Procedure Rules provide for orders where an appeal lies as of right and states that any other order that is not listed therein would require the leave of the court before such an appeal is lodged. In this case, the Plaintiffs are desirous of appealing against an order declining leave to appeal, which is not one of the orders where an appeal would lie as of right and therefore leave is a prerequisite before an appeal is filed. Order 43 Rule 1(3) provides that such leave ought to be sought within 14 days from the date of such an order. The Ruling was delivered on 13th May 2024 and the Plaintiffs filed their application on 20th May 2024, meaning that the leave to appeal was sought within the statutory timeline.
3. On whether to grant or decline such an application, the Court of Appeal in *Bandali t/a Shimoni Enterprises v Wills* [1991] KECA 8 (KLR) held as follows:

“Mr Juma referred us to *Sango Bay Estates Ltd v Dresdner Bank AG* [1971] EA 17 at 20 in which Spry V P said:

“I turn to the application itself which can, I think, be disposed of very briefly . As I understand it, leave to appeal from an order in civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious judicial considerations but where, as in the present case, the order from which it is sought to appeal was made in the exercise of a judicial discretion, a rather stronger case will have to be made out.”

The reason which motivated Spry VP to give this ruling was the wording of the corresponding Uganda section 77(1) of the Uganda *Civil Procedure Act*. This differs in one respect from our section 75(1) because the words ‘and from no other orders’ do not appear in our section and the Vice President felt that that negative provision (although para (h) was identical to the Kenya para (h) had the effect that the earlier case of *Gurbacan Singh Kalsi v Yowani Ekori* [1958] EA 456 was wrongly decided, because in the earlier case it had been assumed that leave to appeal would be granted automatically.

The quotation above shows us that this is not so and that the applicants must show that there are grounds of appeal which merit serious consideration; if it is a matter of discretion, a stronger case is required.”

4. From the above, it is clear that the applicant seeking leave has to demonstrate that it has arguable grounds of appeal and I would have to agree with the Bank’s submission that this consideration is best determined when there is a draft memorandum of appeal annexed. No such draft memorandum of appeal has been annexed for the court’s perusal and it is thus difficult for this court to determine whether there are strong grounds of appeal. In any case, I have gone through the grounds set out in the application and the deposition and I still cannot discern what grounds the Plaintiffs will be relying on in their appeal. Other than regurgitating the reasons for the late filing of their previous application, I find that the Plaintiffs have not demonstrated that they have an arguable appeal before the Court of Appeal
5. In the upshot, I refuse to allow the application for leave to appeal as sought in the Plaintiff’s application dated 20th May 2024. The same is therefore dismissed with costs to the Defendant.

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

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J.W.W. MONGARE



JUDGE

In the presence of:-

1. Mr. Kamau for the Plaintiff/ Applicant.
2. Mr. Nyanjwa for the Respondent.
3. Amos- Court Assistant

