



REPUBLIC OF KENYA



KENYA LAW
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**Kenya Orient Insurance Co Ltd v Alal (Civil Appeal E520 of 2024)
[2025] KEHC 8253 (KLR) (Civ) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8253 (KLR)

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

CIVIL

CIVIL APPEAL E520 OF 2024

AC MRIMA, J

JUNE 12, 2025

BETWEEN

KENYA ORIENT INSURANCE CO LTD APPELLANT

AND

SALOME ADHIAMBO ALAL RESPONDENT

*(Appeal on execution of the judgment and decree in the Nairobi
[Milimani] Chief Magistrates Commercial Court Case No. E6817 of 2018)*

RULING

1. This is a composite ruling on two applications. They are a Notice of Motion dated 14th February 2025 which was filed by the Appellant seeking to reinstate the appeal and the other one was a Notice of Motion dated 27th November 2024 filed by the Respondent seeking the release of the money deposited as security in Court.
2. Given the nature of the applications, in the event the Notice of Motion dated 14th February 2025 succeeds then the one dated 27th November 2024 shall stand disallowed and vice versa. The Respondent opposed the Notice of Motion dated 14th February 2025 by filing a Replying Affidavit which she deposed to on 14th February 2025 stating that the Appellant did not offer sufficient cause to allow the application. She prayed that her application be allowed as prayed as the Appellant's be dismissed with costs. She further ventilated her position through written submissions and a List of Authorities. The Appellant also filed written submissions in urging this Court to allow the appeal be heard on merit since its failure to prosecute the appeal as ordered was hampered by the lack of typed and certified proceedings from the trial Court; acts which were outside its scope and control.



3. This Court has carefully considered the record, two applications, the submissions and the decisions referred to. There is no doubt the Appellant was ordered to prosecute the appeal within 90 days as from 25th June 2024 failure to which the appeal shall stand dismissed. The appeal was not prosecuted as ordered and on 1st October 2024 the dismissal order was affirmed and file marked as closed. To this Court, there are two main reasons why this Court ought to exercise its discretion in favour of the Appellant. The first one is that the period of 90 days had not lapsed when the appeal was marked as dismissed on 1st October 2024. I say so since the High Court was on recess as from 1st August 2024 up to 15th September 2024 in accordance with the *High Court (Organization and Administration) Act*. During such period, time did not run and it was, therefore, not possible for the Appellant to prosecute the appeal during the recess period [See the Court of Appeal in *Maersk Kenya Limited v Murabu Chaka Tsuma* [2017] KECA 204 (KLR)]. The 90-day period, hence, was to lapse way beyond the 1st October 2024.
4. The second reason was the unavailability of the trial Court's proceedings and judgment. There is evidence that the Appellant's Counsel requested for the same and that the appeal came up severally before the Hon. Deputy Registrar where the unavailability thereof was confirmed. This Court also called for the trial Court file in April 2024 and the same was not delivered until way after March 2025 and even so, the proceedings are still not typed. As there were no directions given on dispensing with the filing and service of the Record of Appeal, there was no way the Appellant would have filed a complete record in the absence of the certified proceedings and judgment and had the appeal heard with the window given by the Court. There was, hence, sufficient cause as to why the Appellant could not have listed the appeal for hearing as ordered.
5. It is on the basis of the foregoing that this Court finds favour with the Appellant. As a result, the following final orders hereby issue: -
 - a. The Notice of Motion dated 27th November 2024 is hereby disallowed.
 - b. The Notice of Motion dated 14th February 2025 is allowed to the extent that Order made by this Court on 25th June 2024 directing that the appeal herein be prosecuted within 90 days and in default the appeal stand dismissed is hereby set aside and/or vacated.
 - c. The appeal is, henceforth, reinstated for hearing and determination. Equally, the order on stay of execution of the judgment and decree in the Nairobi [Milimani] Chief Magistrates Commercial Court Case No. E6817 of 2018 is hereby reinstated.
 - d. Pending the determination of this appeal, any form of execution of the judgment and decree in the Nairobi [Milimani] Chief Magistrates Commercial Court Case No. E6817 of 2018 taken out is hereby quashed forthwith.
 - e. The Hon. Deputy Registrar shall avail the Lower Court file for the typing and certification of the proceedings.
 - f. Costs in cause.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 12TH DAY OF JUNE, 2025.

A. C. MRIMA

JUDGE

Ruling No.1 virtually delivered in the presence of:



Miss. Rono, Learned Counsel for the Appellant.

No appearance for Mr. Muyundo, Learned Counsel for the Respondent.

Amina/Abdirazak – Court Assistants.

