



Kenya Orient Insurance Company Ltd v Mwangi & another (Civil Appeal 152 of 2024) [2025] KEHC 10686 (KLR) (17 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10686 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL 152 OF 2024
FN MUCHEMI, J
JULY 17, 2025**

BETWEEN

KENYA ORIENT INSURANCE COMPANY LTD APPELLANT

AND

ELIZABETH NJOKI MWANGI 1ST RESPONDENT

MARUBE JACKSON MAETA ALIAS MAETA MARUBE

JACKSON 2ND RESPONDENT

RULING

Brief Facts

1. The application dated 27th March 2025 seeks for orders that the memorandum of appeal dated 7th June 2024 be declared incompetent for being filed out of time.
2. The respondents filed a Replying Affidavit dated 5th June 2025 in opposition to the application.

Applicant's Case

3. The applicant states that the judgment in *Ruiru Magistrates Court Civil Suit E050 of 2023* was delivered on 7th May 2024 but the appellant filed the memorandum of appeal on 2nd July 2024. The applicant argues that no leave of court had been sought and thus the appeal should be struck out as it was filed out of time.
4. The applicant further avers that the appeal is in the wrong forum since appeals emanating from Ruiru Law Courts ought to be filed at the High Court in Kiambu.
5. The applicant states that Order 42 (11) of the [Civil Procedure Rules](#) requires the appellant upon filing the memorandum of appeal to list the matter before a judge for direction under Section 79B of the Act within thirty days. Furthermore, Order 42 Rule 13(1) of the [Civil Procedure Rules](#) requires the



appellant to cause the appeal to be listed for directions which they have not done. Thus, the applicant argues that the appellant is not keen in prosecuting the appeal.

6. The applicant states that the continued delay in prosecuting the appeal is deliberate and intent on engaging her in endless frivolous and vexatious litigation. Further, the continued pendency of the appeal is prejudicial to her and thus ought to be struck out.

The 1st Respondent's Case

7. The respondent states that he received instructions to appeal against the decision in the trial court in *Ruiru SPMCC No. E050 of 2023* delivered on 7th May 2024 and he uploaded the Memorandum of Appeal but it lacked the accompanying payment resulting in its improper filing. The respondent argues that the filing irregularity was occasioned inadvertently and it would be manifestly unjust for the litigant to suffer the consequences of an error that is solely attributable to counsel.
8. The respondent states that the appeal raises substantial and arguable grounds with high probability of success and thus it is in the interests of justice that it be heard on its merits.
9. The respondent states that the primary issue raised in the current application is the inadvertent delay in effecting payment of the requisite filing fees. The said delay was neither intentional nor a sign of indifference but rather a genuine oversight which ought not to prejudice the appellant's right to be heard on appeal.
10. The respondent argues that the instant appeal has proceeded through various stages before the court. Directions have been issued including an order for filing the Record of Appeal which the appellant has fully complied. Thus the current application brought at this advanced stage of the proceedings appears not only belated but also calculated to frustrate the just determination of the appeal. It ought to have been raised prior to the court issuing directions and the matter progressing.
11. The respondent states that the objection raised is purely procedural in nature and does not touch upon the substantive merits of the appeal. It is a technicality that should not be permitted to defeat the ends of justice.
12. The respondent further states that the court is clothed with wide discretion to administer justice substantively and equitably. Thus, the respondent urges the court to exercise its discretion in favour of sustaining the appeal particularly where the procedural lapse has not occasioned any prejudice to the applicant. It is in the interests of justice and fairness that the appeal be determined on its merits rather than dismissed on procedural technicalities pursuant to Article 159(2)(d) of the *Constitution*.
13. This court gave directions to the parties to file submissions but from the record the appellant failed to file his submissions by the time of writing this ruling.

The 1st Respondent's/Applicant's Submissions

14. The 1st respondent submits that the appellant ought to have filed its appeal by 8th June 2024 following the delivery of the judgment in the trial court Ruiru MCC E050 of 2023 on 7th May 2024. The 1st respondent submits that the appellant uploaded the Memorandum of Appeal on 2nd July 2024 thus occasioning a delay of 26 days. Furthermore, the appellant ought to have requested for typed proceedings by 8th June 2024 but did so on 6th December 2024 which is 157 days after filing the memorandum of appeal despite the trial court having prepared the same on 17th July 2024. Upon filing the current application, the appellant woke up from its slumber and filed the record of appeal on 3rd April 2025.



15. The 1st respondent relies on Section 79G of the *Civil Procedure Act* and the cases of *Salat v Independence Electoral & Boundaries Commission & 7 Others* [2014] KESC 12 (KLR) and *Kabaru & Another v Maina* (Civil Appeal E172 of 2023) [2024] KEHC 10644 (KLR) (11 September 2024) (Judgment) and submits that the court has no jurisdiction to entertain the appellant’s appeal which was filed out of time and without the leave of the court.
16. Relying on the cases of *Ndung’u v Njuguna* [2024] KEHC 8472 (KLR); *County Executive of Kisumu v County Government of Kisumu & 8 Others* [2017] KESC 16 (KLR) and *Digoi v Seurei* [2024] KEELC 6982 (KLR), the 1st respondent submits that the trial court had already proof read typed and had certified copy of proceedings ready for collection on 17th July 2024 but the appellant did not collect them and only filed a Record of Appeal on 3rd April 2025 after service of the instant application.

The Law

Whether the application has merit

Judgment in Ruiru Civil Suit No. E050 of 2023 was delivered on 7th May 2024. From the record, the appellant filed its Memorandum of Appeal on 7th June 2024. The memorandum of appeal though filed has not been paid for. The appellant further on 14th June 2024 filed an application for stay of execution and attached a copy of its memorandum of appeal. On 25th February 2025 the matter came up for mention and the court granted the appellant twenty one (21) days to file the record of appeal. From the record, the 1st respondent was never served with the said memorandum of appeal and only came to know about it when she was served with the application for stay of execution. The matter came up for mention on 7th April 2025 when the 1st respondent informed the court that she was served with the record of appeal however the appeal was filed out of time without the requisite leave. From the proceedings, it is evident that although the appellant filed the memorandum of appeal, it did not pay the requisite fees. Furthermore, the court gave directions on the appeal directing that the appellant ought to file the record of appeal within 21 days as the lower court file was already availed and the proceedings were already typed and certified.

17. I have perused the Case Tracking system (C.T.S.) and it shows that this appeal was filed in Kiambu on 7th June 2024 which was the last day within the time allowed for filing the appeal. The Memorandum of appeal was not paid for until 10th June 2024 as shown by receipt No. FSEP – 0039479 for KSh.1,550 dated 10th June 2024. The court rules regarding payment of court fees are that a document filed in court shall be held as validly filed upon payment of the requisite fees. In the case before me, the appeal was validly filed on 10th June 2024 which was three (3) days after the time allowed for filing appeals in civil appeal cases had expired. The appeal was therefore filed late with three (3) days.
18. The appellant did not explain why he was late in submitting the payment. However, there could be technical problems with the C.T.S. or just an omission to act on part of the appellant’s advocate. As argued by the appellant this court has a wide discretion in admitting documents before it later than the time allowed under the law. It is noted this appeal is at advanced stage and that the record of appeal has already been filed.
19. In the circumstances I wish to make reference to Section 96 of the *Civil Procedure Act* which provides –

“Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court fees has not been paid, the court may, in its discretion, at any stage, allow the person by whom such fee is payable to pay the whole or part, as the case may



be, of the fee; and upon such payment the document in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.”

20. In the case of *Mbogo v Nana Ongage & Co. Advocates* (Misc. Civil Application No. 104 of 2022 (2023 KEHC 19074, the court exercised its discretion by allowing a party to make good the deficiency of unpaid court fees.
21. Relying on S.96 which gives the court discretion to allow late payment of court fees, I hereby find that it would be in the interests of justice to exercise the discretion of this court to cure the defect in this matter.
22. As such I hereby make the following orders:-
 - a. That the court fees for the memorandum of appeal paid on 10th June 2024 is hereby deemed as properly paid and this appeal held as properly filed.
 - b. That the appellant herein shall meet the costs of this application which will abide in the appeal.
 - c. The application dated 27th March 2025 is hereby dismissed.
23. There shall be no order as to costs
24. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 17TH DAY OF JULY 2025.

F. MUCHEMI

JUDGE

