



**Chana v Diamond Trust Bank Limited & another (Constitutional Petition 201 of 2019)  
[2024] KEHC 1039 (KLR) (Constitutional and Human Rights) (9 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1039 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
CONSTITUTIONAL PETITION 201 OF 2019**

**EC MWITA, J**

**FEBRUARY 9, 2024**

**BETWEEN**

**SAVRAJI SINGH CHANA ..... PETITIONER**

**AND**

**DIAMOND TRUST BANK LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**AIRTEL NETWORK (KENYA) LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The petitioner took out a motion application dated 24<sup>th</sup> January 2022, seeking two orders: that the firm of Ekuru Aukot & Co. Advocates be granted leave to come on record on his behalf in place of the firm of Gumbo & Associates Advocates that previous acted for him and leave to appeal out of time against the judgment delivered on 28<sup>th</sup> May 2020.
2. The petitioner asserts that the judgment to be appealed against dismissed his petition and although he instructed the previous advocates to appeal, those instructions were not executed thereby denying him an opportunity to challenge this court's decision on appeal.
3. The petitioner only realized that no appeal had been filed when he was served with party and party bill of costs for taxation. It was then that he instructed the firm of Ekuru Aukot & Co advocates to lodge an appeal, hence this application.
4. The petitioner states that he had not been able to follow the matter during the period 2020-2021 due to the Covid pandemic that ravaged the country and the world.
5. According to the petitioner, the issue that was raised in the petition and which he intends to raise in the appeal is important as it touches on the right of access to information, more so, the utilization of information technology by the respondent bank to the convenience of customers but which resulted



in the loss of deposits due to security breaches and the respondent's refusal to provide information under article 35 of *the Constitution*.

6. The petitioner states that the issue he intends to take on appeal is also of great public interest regarding the efficacious remedy of access to information. In that regard, the appeal is arguable and the respondent will not suffer any prejudice.
7. The petitioner relies on several decisions to support the application and urges the Court to allow the application which the court has read and considered.
8. The respondents oppose the application, arguing that although judgment was delivered on 28<sup>th</sup> May 2020, the petitioner did not lodge an appeal on time and has not attached any correspondence instructing his previous advocates to lodge the appeal.
9. The respondents contend that the delay is inordinate; there is no clear deposition on when instructions to lodge the appeal were given and the petitioner has not been diligent in pursuing the lodging of the appeal. The respondents maintain that the reasons given for not filing an appeal on time are insufficient.
10. In the respondents' view, the petitioner seeks to litigate an issue that has been litigated upon which is an exercise in futility.
11. The respondents rely on several decisions to support their position and urge the court to dismiss the application with costs.
12. I have considered the application and the responses. The petitioner has sought leave to appeal out of time against this Court's judgment delivered on 28<sup>th</sup> May 2020.
13. The petitioner states that although he instructed his previous advocates to lodge an appeal, they did not do so. When he realized that no appeal had been filed, he instructed the present advocates to file the appeal and they filed this application. The petitioner argues that no prejudice will be occasioned to the respondents if leave is granted.
14. The respondents take the position that the delay is inordinate which has not been properly explained.
15. Section 7 of the *Appellate Court Act* grants this court power to extend the time for giving notice of intention to appeal from its judgment or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired.
16. In this respect, the Court has wide discretion to grant leave to appeal. Like all other discretions, however, this discretion should be exercised judiciously, on terms that are just and where circumstances of the case permit.
17. Judgment was delivered on 28<sup>th</sup> May 2020, during the Covid pandemic. This fact is confirmed by the record since judgment was delivered through video link.
18. The petitioner states that he gave instructions to his previous advocates to lodge an appeal but they did not do so. He later on learnt that no appeal had been lodged and he instructed the present firm of advocates and they filed this application in January 2022.
19. The respondents have not denied that judgment was delivered during the Covid pandemic when services were slow, many offices were not fully open and some had even closed due the pandemic.



20. The petition sought declarations on violation of the right to information under article 35 of *the constitution*. Article 35 grants every person the right to information from both natural and juristic persons. The petition having been dismissed, the petitioner wishes to test the correctness of that decision on appeal.
21. The respondents argue that the delay is inordinate. That may be so, but they do not deny that the petitioner had instructed his previous advocates to file an appeal but who did not however execute those instructions. The respondents have not also shown what prejudice they will suffer if leave is granted.
22. The petitioner wants to test the correctness of the decision of this Court on an important issue of access to information under article 35 of *the constitution*. The success or otherwise of such an appeal will go a long way in developing and hopefully settling jurisprudence in this area of the law.
23. I also note, that the decision to be challenged on appeal only dismissed the petition and, therefore, the respondent will not suffer any prejudice if the petitioner is given an opportunity to appeal.
24. In the circumstances, I am persuaded that it is proper to exercise discretion in favour of granting the application. Consequently, the application is allowed. Leave is granted to the firm of Ekuru Aukot & Company Advocates to come on record for the petitioner.
25. As appeals from judgments of this court is of right, the petitioner is granted leave to file notice of appeal out of time. The Notice of Appeal be filed and served within Seven (7) days from the date of this ruling.
26. As there is no evidence of any intended execution, the prayer for stay of execution is declined.
27. No order on costs.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF FEBRUARY 2024**

**E C MWITA**

**JUDGE**

