



**Horizon Coach Company Ltd & another v Munyoki & another (Suing as the Legal Administrator of the Estate of Joseph Munyoki - Deceased) & 2 others (Miscellaneous Civil Application E051 of 2021) [2024] KEHC 2854 (KLR) (11 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2854 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
MISCELLANEOUS CIVIL APPLICATION E051 OF 2021  
TM MATHEKA, J  
MARCH 11, 2024**

**BETWEEN**

**HORIZON COACH COMPANY LTD ..... 1<sup>ST</sup> INTENDED APPLICANT**

**BASARI COMPANY LTD ..... 2<sup>ND</sup> INTENDED APPLICANT**

**AND**

**IRENE MUNYOKI & LEE NGELA MANOKI (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF JOSEPH MUNYOKI - DECEASED) ..... 1<sup>ST</sup> RESPONDENT**

**KYALO GREGORY ..... 2<sup>ND</sup> RESPONDENT**

**SPRINGS ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. A Notice of Motion was filed in this court under section 3A, 79G and 95 of the *Civil Procedure Act* (Cap 21), Order 22 Rule 22, Order 42 Rule 6, Order 50 Rule 6 and Order 51 Rules 1 and 3 of the *Civil Procedure Rules, 2010* and all other enabling provisions of the Law. on the 6<sup>th</sup> July 2021 by the firm of Kimondo Gachoka & Co Advocates seeking the orders: -
  1. That this application be certified as urgent and be heard ex parte in the first instance.
  2. That this Honourable Court be pleased to grant leave to the applicants to appeal out of time against the judgment of the Honourable Senior Principal Magistrate J. O. Magori delivered on the 30/03/2021 in Makindu CMCC No 613 of 2016.
  3. That this Honourable Court be pleased to stay execution of the judgment and decree in Makindu CMCC No 613 of 2016 pending the hearing and determination of the application herein.



4. That this Honourable Court be pleased to stay execution of the judgment and decree in Makindu CMCC No 613 of 2016 pending the hearing and determination of the application and the intended appeal herein.
5. That the appellants'/applicants' be allowed to furnish the court with reasonable security in the form of a bank guarantee.
6. That the costs of this application abide the outcome of the intended appeal.
2. The application was supported by the certificate of urgency of George Morara Mongeri, Advocate and the supporting affidavit of Kelvin Ngure Advocates
3. The grounds for the application are on the face of the application and in the supporting affidavit.
4. The application was placed before Hon Dulu J on the 8<sup>th</sup> July 2021 where the court decided to grant any interim orders.
5. Thereafter the matter was fixed for mention several times by the court and the applicants but they never appeared for directions before Hon Dulu J.
6. The matter came before me on the 26<sup>th</sup> June 2023 when Ms. Kemunto appeared for the applicant and told the court that they were ready to prosecute their application. They were given directions to serve the application and their submissions on the respondent.
7. To date there is neither submission nor evidence of service on the other side despite Ms. Kemunto going on record to state that they had filed and served the application and submissions.
8. Evidently, there was never any intention to prosecute the application and counsel ought to have been candid that that was the position.
9. Considering the period of time that has passed since the application was filed and the lack of action I can only deduce that the applicant has lost interest in the same. Most probably the prayers sought have been overtaken by events.
10. In the circumstances the application is dismissed for want of prosecution.
11. This file is closed.

**DATED SIGNED AND DELIVERED THIS 11<sup>TH</sup> MARCH 2024.**

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**MUMBUA T. MATHEKA**

**JUDGE**

CA Nelima

Kimondo Gachoka & Co Advocates for the Applicant

