



**Middle East Bank Ltd v Prisco Petroleum Network Ltd & 5 others (Civil Case 52 of 2014) [2024] KEHC 2018 (KLR) (Civ) (1 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2018 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**CIVIL**  
**CIVIL CASE 52 OF 2014**  
**FG MUGAMBI, J**  
**MARCH 1, 2024**

**BETWEEN**

**MIDDLE EAST BANK LTD ..... PLAINTIFF**

**AND**

**PRISCO PETROLEUM NETWORK LTD ..... 1<sup>ST</sup> DEFENDANT**

**CHARLES WAITHAKA KING'ORI ..... 2<sup>ND</sup> DEFENDANT**

**SHADRACK NDAMBUKI KOMBO ..... 3<sup>RD</sup> DEFENDANT**

**ELIJAH JOHN MWANGI KINYANJUI ..... 4<sup>TH</sup> DEFENDANT**

**NAPHTALI MUNGAI MUREITHI ..... 5<sup>TH</sup> DEFENDANT**

**CHRIS NYAKUNDI ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

**Background**

1. This ruling determines the application dated 30<sup>th</sup> March 2023. It is brought under Order 43 rule (1), (2) and (3) as well as Order 51 rule 1 of the *Civil Procedure Rules*, seeking leave for the plaintiff to appeal against the orders of this Honourable Court issued on 20<sup>th</sup> January 2023 as well as an order preserving the status quo obtaining on the prohibitory order issued in execution of the decree herein on 21<sup>st</sup> September 2017 and Registered against Title LR Number 14747/19 (LR. NO. 48457) on 11<sup>th</sup> October 2017, pending the hearing and determination of the plaintiff's appeal in the Court of Appeal.
2. The application is supported by the affidavit sworn by Solomon Odiero, an officer at the Special Projects Department of the Decree Holder/ Applicant Bank, on 30<sup>th</sup> March 2023. Briefly, the plaintiff obtained a Prohibitory Order issued on 21<sup>st</sup> September 2017 and registered on 11<sup>th</sup> October 2017



against Title LR Number 14747/19 (LR. NO. 48457) belonging to the 4<sup>th</sup> defendant. This was in execution of a judgment on admission entered jointly and severally against the defendants on 31<sup>st</sup> October 2014 in the sum of Kshs. 39,544,065/= together with interest.

3. Following the death of the 4<sup>th</sup> defendant on or about 10<sup>th</sup> June 2016 whilst the execution was underway, the plaintiff filed an application dated 14<sup>th</sup> June 2021 seeking to enjoin the administrators of the Estate of the deceased 4<sup>th</sup> defendant. On 20<sup>th</sup> January 2023 this Honourable Court delivered its ruling, dismissing the said application on the grounds that the suit herein had abated. The plaintiff is dissatisfied with the said ruling and has since lodged its Notice of Appeal.
4. The plaintiff confirms that the ruling on 20<sup>th</sup> January 2023 was delivered in the absence of counsel for the decree holder and therefore the decree holder did not have the opportunity to make an oral application for leave to appeal at first instance.
5. The application is opposed vide the Grounds of Opposition dated 26<sup>th</sup> April 2023. The 4<sup>th</sup> defendant argues that the orders sought in the application are incompetent and cannot be granted as sought. This is because in line with the ruling delivered by this Court (Mshila, J), the suit against the 4<sup>th</sup> defendant has already abated by virtue of Order 24 rule 4(4) of the Civil Procedure Rules. In any case, the 4<sup>th</sup> defendant argues that since the application has been filed after a lengthy and unexplained delay, the plaintiff is not entitled to the prayer for leave to appeal.

### Analysis

6. I have carefully considered the pleadings, evidence and submissions made by rival parties. The only issue for determination is whether the plaintiff's application for leave to appeal should be allowed. In light of the directions of this Court parties canvassed the application by way of written submissions. The plaintiff's submissions are dated 19<sup>th</sup> May 2023 and the 4<sup>th</sup> defendant's submissions are dated 15<sup>th</sup> June 2023.
7. Section 75 (1) of the *Civil Procedure Act* provides thus:

“An Appeal shall lie as of right from the following orders and shall also lie from any other order with leave of the court making such order or of the court which an Appeal would lie If leave were granted.”
8. The procedure and manner of filing an application for leave to appeal pursuant to section 75(1) is in turn prescribed under Order 43 rule 3 of the *Civil Procedure Rules*. It provides as follows:

“An application for leave to appeal under Section 75 of the Act shall in the first instance be made to the court making the order sought to be appealed from either orally or at the time when the order is made or within fourteen days from the date of such order. (emphasis added).”
9. The judgment of this Court was delivered on 20<sup>th</sup> January 2023. The plaintiff filed this application on 30<sup>th</sup> March 2023, three months later and therefore outside the time provided by the rules. I concur with the 4<sup>th</sup> defendant that this Court retains discretion to enlarge time, as prescribed under section 95 of the *Civil Procedure Rules* in the following terms:

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”



10. This discretion is not automatic. The parameters within which this Court may extend time for were well laid out by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat V Independent Electoral and Boundaries Commission & 7 Others, [2014] eKLR*, as follows:

“This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:

- i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
- ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court
- iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
- iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
- v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
- vi. Whether the application has been brought without undue delay; and
- vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

11. The Court notes that no reason has been given by the plaintiff to justify the delay of three months in putting in this application. The plaintiff merely claims that the judgment was delivered in the absence of the parties, having been postponed from the scheduled date of delivery. However, no proof has been offered to support this claim. Without any supporting evidence or valid reasons, the Court cannot condone laxity or be an accomplice to indolence. As such, the application for leave to appeal, having been made out of time, is declined. Having so found it follows that the other prayers in the application are equally untenable.

#### **Determination**

12. The long and short of this is that the application dated 30<sup>th</sup> March 2023 is devoid of merit. It is dismissed with costs to the 4<sup>th</sup> defendant.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 1<sup>ST</sup> DAY OF MARCH 2024.**

**F. MUGAMBI**

**JUDGE**

