



**Signon Group Limited & another v Vincent (Miscellaneous Civil Application
E001 of 2023) [2024] KEHC 3714 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3714 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
MISCELLANEOUS CIVIL APPLICATION E001 OF 2023**

RB NGETICH, J

APRIL 4, 2024

BETWEEN

SIGINON GROUP LIMITED & STEPHEN KIPROTICH APPLICANT

AND

KIPKIRUI K VINCENT RESPONDENT

RULING

1. The Applicants have moved this court through a notice of motion application dated 16th August, 2023 brought under the provisions of section 1A, 1B and 3A, 63, 79G of the *Civil Procedure Act*, Cap 21 Laws of Kenya, order 42 rule 6 and order 51 rule (1) of the *Civil Procedure Rules*, 2010 seeking for the following orders:-
 - i. Spent.
 - ii. Spent
 - iii. That the Honourable Court be pleased to grant the Applicants leave to file the Memorandum of Appeal out of time and consequently, the draft Memorandum of Appeal attached herein be deemed to have been properly filed within time upon payment of the requisite fees.
 - iv. That the costs of this application be provided for.
2. The application is premised on the following grounds: -
 - a. That on 8th May, 2023 Honourable A. Towett (PM) delivered judgment in their absence and without the knowledge of the Applicants wherein the Applicants were condemned to pay the Respondent net damages after contribution of Kshs. 592,8071= plus interest and costs at court's rate and by the time Applicants came to know of the Judgment, the prescribed time of 30 days within which the memorandum of appeal should be lodged had lapsed.



- b. That on perusal of the Judgment, the Applicants are aggrieved and dissatisfied with the entire Judgment and are desirous of lodging an appeal.
 - c. That the draft memorandum of appeal attached to the main application clearly sets out the grounds to demonstrate that the appeal has high chances of success and unless the Respondent is restrained by this Honourable court from executing the judgment /decree the Applicants stand to suffer substantial and/or irreparable loss and mental anguish.
 - d. That the Applicants herein shall be exposed to irreparable damage and loss if the said judgment/decree is fully executed in pendency of the instant application taking note that the Respondent herein is not a person of means capable of refunding the decretal sum in the event the instant applications are allowed.
 - e. That in the premise it is fair and just and within the practice of this honourable court that there be a stay of execution of the subject judgment/decree in Eldama Ravine Cmcc No 27 Of 2020 Kipkirui K. Vincent v Siginon Group Limited & Stephen Kiprotich pending the hearing and determination of the instant application.
3. The application is supported by an affidavit sworn by Advocate Kisilah Daniel Gor who avers that being personally seized with the conduct of this matter on behalf of the Applicants, he is conversant with the facts arising herein and thus can competently swear the affidavit.
 4. The deponent restated grounds of appeal and further avers that the intended appeal is in respect to Eldama Ravine Cmcc No 27 of 2020 Kipkirui K. Vincent v Siginon Group Limited & Stephen Kiprotich which matter forms part of a series arising from the same accident. That the other matter forming part of the series is serialized as Eldama Ravine Cmcc No 26 of 2020 Reuben Kipkoech Meli v Siginon Group Limited & Stephen Kiprotich and the two files were not consolidated but heard simultaneously and judgment was slated for the 24th of January, 2023.
 5. That on 24th January, 2023 the court delivered judgment in Eldama Ravine Cmcc No 26 of 2020 Reuben Kipkoech Meli v Siginon Group Limited & Stephen Kiprotich but indicated that judgment in Eldama Ravine Cmcc No 27 Of 2020 Kipkirui K. Vincent v Siginon Group Limited & Stephen Kiprotich was not ready and parties would be notified once the same is ready.
 6. That with utter shock and dismay, he came to learn that judgment in Eldama Ravine Cmcc No 27 of 2020 Kipkirui K. Vincent v Siginon Group Limited & Stephen Kiprotich was delivered on 8th May,2023 in favour of the Respondent when the Respondent served them with the decree and certificate of costs on 10th August,2023.
 7. That on perusal of the Judgment, the Applicants are aggrieved and dissatisfied with the Judgment and are desirous of lodging an appeal and by the time Applicants came to know of the Judgment, the prescribed time of 30 days within an appeal should be lodged as per the provisions of section 79G of the Civil Procedure Act had lapsed.
 8. They aver that failure to file the Memorandum of Appeal within the 30 days period provided for under section 79G of the Civil Procedure Act was because the Applicants were not aware/notified that judgment had been delivered.
 9. That in addition to the aforesaid, the Respondent proceeded to obtain a certificate of costs without involving the Applicants thus denying them the right to participate in the taxation. That the draft memorandum of appeal attached herein clearly sets out the grounds to demonstrate that the appeal has high chances of success. That the Applicants are likely to suffer substantial and irreparable loss



unless the Respondent herein is in the meantime restrained from executing the judgment/decreed and certificate of cost issued herein on 13th July,2023.

Response

10. In response the respondent filed a replying affidavit sworn dated 24th August 2023. He avers that the application dated 16th August, 2023 is bad in law, made in bad faith, inept, lacks merit, an after-thought and otherwise amount to an abuse of the court process. He stated that he filed a case against the Applicants seeking compensation for injuries he sustained as a result of a road traffic accident that occurred on 1st December, 2019 and the matter came up in court on several occasions and on 8th May 2023, the trial court delivered judgment in his favour and the Applicants were granted 30 days stay of execution but failed to satisfy the judgment and have instead filed the present application seeking stay of execution and leave to file the memorandum of appeal out of time.
11. That the Applicants were notified of the judgment through a Letter and certificate of costs sent to the applicant and another letter dated 25th July,2023 tabulating the costs of the suit and the total amount owing to the Respondent for them to make payments and the Applicants confirmed receipt of their previous communications and sought 30 days to enable them settle the matter.
12. The Respondent further stated that a reminder to settle the claim was sent to the Applicants but instead of settling, filed this application seeking to appeal the court's decision and they have not given any sufficient reason for allowing them to file the appeal out of time and the annexed Memorandum of Appeal has no merit and thus no chances of succeeding.
13. The court directed that the application be canvassed by way of written submissions but only the Applicants filed their written submission.

Applicant's Submissions

14. The Applicants identifies the following as the issues for determination: -
 - a. Whether the Application dated 16th August 2023 is merited?
 - b. Who should bear the costs of the Application?
15. On the first issue, the applicant submits that it is settled law that the decision to grant leave to a litigant to file a Memorandum of Appeal out of time rests upon the discretion of the court and this discretionary power is judicial in nature and must be confined to the rules of reason and justice. They cited the case of *Njoroge v Kimani* (Civil Application Nai E049 of 2022) 2022 KECA 1188 (KLR) where the Court of Appeal quoted with approval the decision of the South African Court in *National Union of Mineworkers v Council for Mineral Technology* 1998J ZALAC 22 where the latter stated as follows: -

“The approach is that the court has a discretion, to be exercised judicially upon a consideration of all facts, and in essence, it is a matter of fairness to both parties. Among the facts usually relevant are the degrees of lateness, the explanation therefore, the prospects of success and the importance of the case. These facts are interrelated; they are not individually decisive. What is needed is an objective conspectus of all the facts. A slight delay and a good explanation may help to compensate for prospects of success which are not strong. The importance of the issue and strong prospects of success may tend to compensate for a long delay”.



16. The applicants further cited the Supreme Court of Kenya in the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR which set out factors that ought to guide judicial officers in establishing whether or not the extension of time is warranted.
17. The Applicants submit that the failure to file the Memorandum of Appeal out of time was occasioned by extenuating factors that were purely out of the control of the Applicants and restated grounds of the application and averments in the supporting affidavit and added that the judicial officer after deferring delivery of judgment had a duty to notify parties of the delivery of judgment because court proceedings including delivery of judgments are time bound and there may be reliefs that parties may seek on such occasions or subsequent or consequent proceedings that parties are entitled or indeed enjoined to take.
18. The applicants submit that they were blindsided when they were served with the decree and certificate of costs on 10th August 2023 in respect to the judgment in this matter indicating that the judgment in Eldama Ravine Cmcc No 27 of 2020 Kipkirui K. Vincent v Siginon Group Limited & Stephen Kiprotich had been delivered on 8th May, 2023 in favor of the Respondent. That besides the applicant not being notified of the said judgment, they were not involved in drawing up of the certificate of costs; that delivery of the judgment in absence of such notification was in this case as in all such cases irregular and the same flies in the face of the established rules of the court.
19. That at the time the Applicants came to know of the judgment, the prescribed timeline of 30 days within which an appeal ought to be lodged as per the provisions of section 79G of the *Civil Procedure Act* had lapsed. The failure to file the Memorandum of Appeal within the 30 days was because neither the Applicants nor their Advocates on record were notified that the judgment had been delivered.
20. The applicants submit that no real prejudice would be occasioned to the Respondent if the Applicants are allowed to file the Memorandum of Appeal out of time since the status quo will be maintained pending the hearing and determination of the intended appeal.
21. They submit that costs in the instant matter ought to be awarded to the Applicants as the basis behind the belated filing of the Memorandum of Appeal have been convincingly explained and that the Application has been filed timeously.

Analysis And Determination

22. I have considered the grounds of the application, the averments in affidavits filed and the submissions filed by the Applicants and what I wish to consider whether the delay in filing memorandum of appeal has been sufficiently explained.
23. Section 79G of the *Civil Procedure Act* provides as follows:-

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having requisite for the preparation and delivery to the appellant of a copy of the decree or order: provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

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24. The provision of section 79G of the *Civil Procedure Act* provides that an appeal may be admitted out of time if delay is sufficiently explained to the court by the applicant. While considering the reasons given,



the court is required to take into account the length of the delay, the reason for the delay, the chances of the appeal succeeding if the application is granted leave and the degree of prejudice the respondent is likely to suffer if the application is allowed.

25. Record show that the trial court judgment was delivered on 8th May, 2023, while the current application was filed on 16th August, 2023. The appeal was expected to have been filed within 30 days from 8th may 2023. The applicant filed the application 3 months after delivery of judgment. Reason given by the applicants is that they were not aware that the judgement had been delivered as judgment was deferred on the scheduled date and they were to be notified of the next date for delivery of judgment. They stated that they learnt of the judgment when they were served with certificate of costs.
26. On the other hand, the Respondents argue that the Applicants abdicated on their duty as they were notified of the delivery of the judgement vide letters and emails but chose to ignore.
27. Upon perusing the annexures filed by the Applicant, I am satisfied that the delay of three months has been explained satisfactorily by the applicants; the delay is excusable; the delay is not inordinate in the circumstances. Further no prejudice that may be suffered by the respondent has been explained to this court. From the foregoing I am inclined to allow the applicants an opportunity to ventilate their grievances by way of an appeal to this Court.
28. Final Orders: -
 1. The applicants are granted leave to file appeal out of time.
 2. Costs of the application to abide by the outcome of the appeal.

RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 4TH DAY OF APRIL 2024.

RACHEL NGETICH

JUDGE

In the presence of:

CA Karanja.

Ms Otenyo H/B for Ms. Mwangi counsel for the Applicant.

Ms. Sitati counsel for the Respondent.

