



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ouma v Monari & 2 others (Miscellaneous Civil Application  
15 of 2024) [2024] KEHC 5504 (KLR) (7 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5504 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
MISCELLANEOUS CIVIL APPLICATION 15 OF 2024**

**AC MRIMA, J**

**MAY 7, 2024**

**BETWEEN**

**MARTHA NDULU OUMA ..... APPLICANT**

**AND**

**SABINA KERUBO MONARI ..... 1<sup>ST</sup> RESPONDENT**

**TRANS KENYA WOMEN SACCO LTD ..... 2<sup>ND</sup> RESPONDENT**

**DIMONE AGENCIES & AUCTIONEERS ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before Court for consideration is the Applicant's application by way of Notice of Motion dated 8<sup>th</sup> April, 2024.
2. The application sought for the following orders: -
  1. That this application be certified urgent and the same be heard on priority basis.
  2. That the applicant be granted leave to appeal against the orders of committal to civil jail for six months in execution of decree in Kitale CMCC No.375 of 2013.
  3. That the applicant be admitted to personal bond of Kshs.1,000,000/- and be released from civil jail pending hearing and determination of this application.
  4. That the applicant be admitted to personal bond of Kshs.1,000,000/- pending hearing and determination of the intended appeal.
  5. That costs of this application be provided for.
3. The application was based on the grounds appearing on the body thereof and was supported by the Affidavit of Martha Ndulu Ouma, the Applicant herein.



4. When the application came before Court, Learned Counsel for the 1<sup>st</sup> Respondent indicated that he was not opposed to the grant of prayer 2. On prayer 3, Learned Counsel submitted that the Applicant do instead post a surety bond instead of a personal bond.
5. The Applicant's Counsel was of the view that subjecting the Applicant to post a surety bond in a case where the lower Court did not have jurisdiction and the Applicant's rights were clearly derogated was tantamount to a further derogation of her rights. He urged that the personal bond was adequate.
6. This Court was, hence, called upon to majorly determine whether the Applicant be released on a personal or surety bond more so since there was no objection to the prayer for leave to lodge an appeal out of time.
7. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not take part in this matter.
8. This Court has considered the Draft Memorandum of Appeal. There is no doubt the intended appeal raises reasonably arguable grounds.
9. Further, from the annexed copy of the Warrant of Arrest dated 30<sup>th</sup> May 2023, it may appear that the Applicant was not sued in person in the case before the lower Court. However, the Warrant of Arrest enlisted her as a Director of Trans Kenya Women Sacco Ltd, the 2<sup>nd</sup> Respondent herein.
10. There is also uncontroverted evidence that the 2<sup>nd</sup> Respondent was placed under liquidation sometimes in 2019.
11. Having intently considered the application, this Court is of the considered position that the application is merited. It is only fair that the Applicant be heard before such drastic orders are made against her. That is at the heart of Article 50(1) of the Constitution.
12. Consequently, the following final orders do hereby issue: -
  - a. Prayers 2 and 4 are hereby granted.
  - b. For clarity, the Applicant herein, Martha Ndulu Ouma, be released from civil jail upon executing a personal bond of Kshs. 1,000,000/= [Read: Kenya Shillings One Million Only].
  - c. The Memorandum of Appeal be filed and served within 14 days of this order.
  - d. Costs of the application be in the appeal.
  - e. File marked as closed.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 7<sup>TH</sup> DAY OF MAY, 2024.**

**A. C. MRIMA**

**JUDGE**

Ruling delivered virtually in the presence of:

Mr. Bikundo, Learned Counsel for the Applicant.

Mr. Ingosi, Learned Counsel for the 1<sup>st</sup> Respondent.

No appearance for the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents.

Chemosop/Duke – Court Assistants.

