



**Wamududa v Kenya Qatar Diaspora Savings & Credit Co-operative Society Ltd (Civil Miscellaneous E732 of 2023) [2024] KEHC 6980 (KLR) (Civ) (12 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6980 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL MISCELLANEOUS E732 OF 2023  
JN MULWA, J  
JUNE 12, 2024**

**BETWEEN**

**REV. HABBAKUK WAMUDUDA ..... APPLICANT**

**AND**

**KENYA QATAR DIASPORA SAVINGS & CREDIT CO-OPERATIVE SOCIETY LTD ..... RESPONDENT**

**RULING**

1. The Co-operative Tribunal at Nairobi in Tribunal case No. 418 of 2020 entered an ex-parte Interlocutory Judgment against the Applicant on 22/02/2022 for failure to defend the suit despite having entered an appearance. Upon realization the applicant moved by application to the Tribunal seeking to set aside the exparte judgment and leave to file its defence but the said application was dismissed in CTC 418 of 2020 on 23/02/2023 and 21 days stay of execution granted by the Tribunal.
2. The Applicant states that despite requesting for proceedings from the Tribunal to facilitate filing of an appeal against the Tribunals dismissal order on 23/02/2023 none was supplied upto 18/08/2023 when statutory time to file the appeal had lapsed.
3. By the Application dated 30/08/2023 before the court the Applicant seeks orders that:
  1. Spent
  2. That pending the hearing and determination of this Application inter-partes the Honourable court be pleased to stay execution of the default judgment entered on 22/02/2022 in CTC 418 of 2020.



3. That the Applicant be granted leave to file an Appeal against the ruling of hon. Deputy Chairperson in CTC 418/2020 delivered on 23/02/2023 in terms of the draft Memorandum of Appeal out of time.
4. That pending hearing and determination of the intended Appeal, there be stay of execution of the decree in CTC 418/2020.
5. That costs of the Application be in the cause.

Rev. Habakkuk Wamududa the Applicant swore the Supporting Affidavit on 30/08/2023 which is a replica of the grounds for the application stated at its face.

4. The Respondent objects to the orders sought by a Notice of Preliminary Objection dated 18/10/2023 upon grounds that:
  1. Order 9 Rule 9 of the *Civil Procedure Rules* in respect of the Applicants current advocates has not been complied with.
  2. Section 74 (1) of the *Co-operative Societies Act* does not provide for extension of time to lodge appearance upon expiry of 30 days on Surcharge Orders.
  3. That the intended appeal has no points of law in terms of Section 74(2).
  4. That the intended Appeal is res-judicata and an abuse of court process there having been three (3) similar applications filed and all dismissed.
5. The Preliminary Objection was argued by Counsel for the parties wherein Mr. Mbuthia appeared for the Respondent and Mr. Kemunto appeared for the Applicant.

I have considered the pleadings, oral arguments and authorities cited.

6. On the objection on counsel representation of the Applicant in line with Order 9 rule 9 of the *Civil Procedure Rules* (CPR) the current advocates Chimei & Co. Advocates were allowed by the Court in CTC 418/2020 to come on record for the Applicant by an order dated 5/01/2022 and a Notice of Change of Advocates duly filed at the Tribunal. This objection therefore fails. The applicant's Advocates are properly on record.
7. It is trite that a Preliminary Objection consists of points of law that have been pleaded or which arise by clear implication from the pleadings as held in *Mukisa Biscuits Manufacturing ltd vs. WestEnd Distributors* (1969) EA 696; and *Philmaric Systems Co. Ltd v. Andermore Enterprises* (2018) eKLR.
8. The Tribunal's order subject of the instant application is dated 23/02/2023 and the judgment thereof dated 22/02/2022.

The ruling or order sought to be appealed against dated 23/02/2023 has not been provided to the court by way of annexure to the Supporting Affidavit or otherwise. The application resulting in the impugned ruling/order is also not provided for this court's consideration.

9. In the circumstances, this court is in darkness as to what to refer to, to enable it to come to an informed decision.

Further, and more critical is that the impugned ruling/order subject of the intended appeal was delivered not in this misc. application but in CTC 418 of 2020 which matter and/or proceedings have not been provided to this court. It is not enough or sufficient to file the Memorandum of Appeal, and leave the court to wonder in the wilderness as to the terms of the impugned ruling or judgment.



10. I do not believe that a court is expected to simply hand out orders that are not supported by any tangible pleadings or documents. To do so in my view would be to set a very dangerous precedent as parties would, without any justification seek various orders from the court without anchoring them on sufficient pleadings.

What if at the end the court finds that there was misrepresentation by either of the parties? Court orders/ruling ought to be extracted and provided to the court to assist it in make informed decisions.

11. In the Preliminary Objection under review the respondent states that the intended appeal is res-judicata and an abuse of court process, and cites at least two other applications JR No. E1117/2020, CTC 418/2020 wherein similar applications were made and dismissed on various dates.

Without a doubt a court cannot determine the authenticity of counsel submissions from the bar that there are similar applications filed and dismissed without providing them to the court. As a result, I am not persuaded to find that the current application is res judicata.

12. On the matter of extension of time to file appeal out of time under the Co-operative Societies Act Section 74 (1) and (2),

the court finds that the applicant seeks leave to file appeal from the tribunal's dismissal order of an application to set aside the exparte/interlocutory Judgment and leave to defend the suit on 23/02/2023 upon which 21 days stay of execution was granted.

As I stated earlier this ruling or order has not been provided to the court.

13. In the premises, Section 74(1) of the Act is not relevant in the circumstances as what is sought to be extended is not time to appeal against surcharge orders.

14. By and large and by dint of Article 50(1) of the Constitution, a litigant is entitled to and has a right to fair hearing before a competent court of law and an impartial tribunal or body.

15. In the end, I find no sufficient grounds upon which the Preliminary Objection may be sustained. It is dismissed. Costs of the P.O. shall be in the cause.

directions on motion dated 30/8/2023.

It shall be disposed of by way of written submissions

The Applicant shall file and serve its submissions within 14 days. Upon service the Respondent shall file its submissions if any and exchange within 14 days.

The matter shall be listed for mention to take a ruling date on 22/7/2024.

16. An order of status quo shall be maintained upto 22/7/2024.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 12<sup>TH</sup> DAY OF JUNE, 2024**

**JANET MULWA**

**JUDGE**

