



Laikipia University College v Kibia (Suing as the Legal Representative of the Estate of Peter Maina Mwaura - Deceased) (Civil Appeal 22 of 2023) [2024] KEHC 9451 (KLR) (24 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9451 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CIVIL APPEAL 22 OF 2023
AK NDUNG’U, J
JULY 24, 2024**

BETWEEN

LAIKIPIA UNIVERSITY COLLEGE APPELLANT

AND

FRANCIS MWAURA KIBIA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF PETER MAINA MWAURA - DECEASED) RESPONDENT

RULING

1. This ruling resolves the Notice of Motion dated 6th May, 2024 seeking orders;
 - i. Spent
 - ii. Spent
 - iii. That court be pleased to enlarge the time granted to the Applicant herein to comply with conditional orders of stay of execution pending appeal issued on 21st December, 2023.
 - iv. That court be pleased to make any other orders that it may deem just and fit to grant in the circumstances.
 - v. That costs of this application be provided.
2. The application is supported by the following grounds;
 - a. That the Applicant was granted a stay pending appeal on 21st December, 2023.
 - b. That as a condition for the stay, the court directed the Applicant to deposit half the decretal amount in a joint interest earning account within 30 days.
 - c. That given the ruling being delivered in the December period when the Applicant being an institution having its offices closed and movement of the file from Ol’kalou to Nyahururu the



Applicant submitted its documents to the bank and the same were received on 27th February, 2024.

- d. That the said delay had been explained to the Respondent's counsel who agreed to the opening of the account and executed the documents.
 - e. That the Applicant's counsel submitted the cheques to the Bank (Cooperative Bank Nakuru Branch) and paid the requisite fees for authentication of the court order.
 - f. That however due to delays on the bank's side the authenticating the orders, there was a delay in opening the said account which has since been opened.
 - g. That the Respondent despite being aware of the status of the matter proceeded to instruct auctioneers to proclaim the Applicant's property.
 - h. That the circumstances is only fair that the court enlarges time for compliance with its orders of stay.
 - i. That no prejudice shall be suffered by the Respondent as the amount has already been deposited in the joint interest earning account.
 - j. That this application is timeously brought.
 - k. That it is in the interest of justice that this application is allowed.
3. The application is further supported by the affidavit of Appellant. That the Respondent despite being aware of the delays by the bank proceeded to instruct auctioneers to proclaim the Applicant's property.
4. That no prejudice will be suffered by the Respondent as the amount has already been deposited in the joint interest earning account.
5. The Respondent filed a replying affidavit dated 15th May, 2024 bringing out the following facts;
- a. The orders the Applicant are seeking for were issued on 21st December, 2024.
 - b. During delivery of the said ruling the Applicants representative were absent.
 - c. Upon delivery of the said ruling the respondent's advocates notified the Appellant's advocates of the directions given by the court.
 - d. Despite the Applicant being aware of the said orders they never complied with the same.
 - e. After delivery of the said ruling the Applicants never appeared in any consecutive mentions that were allocated by the court despite service of the same and they were only awakened by warrants of attachment.
 - f. That earlier on 8th February, 2024 the Applicants requested for our firm documents for purposes of opening of bank account which were supplied on 9th February, 2024 and documents executed to open the necessary account. The bank account was not opened until 30th April, 2024.
 - g. Later, auctioneers were instructed to execute against the Appellant.
 - h. That upon service of warrants of attachment on 3rd May, 2024 the Respondents hurriedly deposited ½ decretal amount as ordered.
 - i. That the letter from Cooperative bank is Applicant's efforts to cover their failures.



- j. That no explanation or evidence have been given by the Applicant indicating the difficulties they faced in securing court orders.
 - k. That the orders the Applicant are seeking to be extended were conditional have already expired and as such there are no orders to extend.
 - l. That the Applicant is habitual contemnor as the tactics they are applying are similar to those they were applying in the trial court by skipping court attendances.
 - m. That the Applicant have never communicated the difficulties they were facing in opening the bank account and their explanation on the same is a mere excuse.
 - n. That Applicant is indolent parties and they are guilty of laches and they are not worth any benefit of equitable reliefs.
 - o. That the Applicant's application should be dismissed with costs.
6. The application was canvassed by way of written submissions; the Applicant filed written submissions dated 20th May, 2024 while the Respondent filed submissions dated 27th May, 2024.
7. The issues for determination are;
- a. Whether extension of time should be granted.
 - b. Who should bear the costs of this application.

a. Whether extension of time should be granted;

8. Section 95 of the *Civil Procedure Act* and Order 50 Rule 6 of the *Civil Procedure Rules* grants this court the power to enlarge time even when the application is made after the expiration of such time for purposes of justice.
9. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR set out the considerations to guide the court in exercising its discretion in cases of this nature. It stated;
- 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.
10. In the instant case the ruling was delivered on 21st December, 2023 directing the Applicant to deposit the amount in court within 30 days. This deadline was not met. I note that the Applicant has explained



that being an institution that had its offices closed at the time, the delay was explained to counsel for the Respondent.

11. I have also perused annexure IW-4(a) which is an explanation by the bank on the attendant delay to the opening of the account.
12. On whether the Respondent will suffer prejudice, I note that the money has already been deposited in a joint interest earning account and the record of appeal has been filed. The Respondent shall not in any way suffer prejudice as his interests are secured and will have a chance to oppose the appeal.
13. It is only fitting that the Applicant's right to be heard on appeal without rendering the appeal nugatory be upheld.
14. Am fortified in this finding by the decision in *Mutinda vs Mutinda alias James Mutinda* (Civil Appeal E256 of 2023) [2024] where the court while extending such time to comply with its conditional orders quoted with approval the view of *John Gachanja Mundia vs Francis Muriira alias Francis Mutbika & Another* [2016] eKLR that;

“....However, I will be guided by a greater sense of justice, courts of law have said that, with the entry of the overriding principle in our law and the anchorage of substantive justice in the Constitution as a principle of justice, courts should always take the wider sense of justice in interpreting the prescriptions of law designed for grant of relief.”
15. It is noteworthy that the monies have already been deposited as ordered by court albeit late. The Respondent stands to suffer no prejudice in the circumstances and the scales of justice would demand that the Appellant be given the chance to ventilate the appeal without the burden of execution proceedings which might render the appeal nugatory.
16. With the result that I exercise discretion in favour the applicant and allow the application in its entirety.

b. Who shall bear the costs;

17. Order 50, rule 6 provides that the costs of such an application shall be borne by the party making it, unless the court orders otherwise. I award throw away costs of Kshs.30,000/ to the respondent.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 24TH DAY OF JULY, 2024.

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A.K. NDUNG’U

JUDGE

