



REPUBLIC OF KENYA



**Jawla v Kaaria & 2 others (Commercial Miscellaneous Application E398 of 2024)  
[2024] KEHC 13411 (KLR) (Commercial and Tax) (25 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13411 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL MISCELLANEOUS APPLICATION E398 OF 2024**

**MN MWANGI, J  
OCTOBER 25, 2024**

**BETWEEN**

**AJAY KUMAR JAWLA ..... APPLICANT**

**AND**

**JOY KARWITHA KAARIA ..... 1<sup>ST</sup> RESPONDENT**

**IMPORTS BY KAIRO LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**LUXURY VEHICLE IMPORTS LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The applicant filed a Notice of Motion application, dated 9<sup>th</sup> May 2024 which was later amended. On 20<sup>th</sup> May 2024, the application was filed pursuant to the provisions of Sections 3, 7, 8 & 10 of the *Fair Administrative Action Act*, Sections 1A, 1B, 3A, 63 & 79G of the *Civil Procedure Act*, Order 42 Rule 6 Order 50 Rule 6 & Order 51 Rule 1 of the Civil Procedure Rules, Articles 27(1) & (2), 40, 47, 48, 50 & 159(2) of *the Constitution* of Kenya, 2010 and all enabling provisions of the law seeking orders for extension of time to file and serve a Memorandum of Appeal and a Record of Appeal against the ruling and consequential orders of Hon. Hosea Ng'ang'a in CMM No. E899 of 2023 delivered on 14<sup>th</sup> December 2023, and an order for stay of proceedings and implementation of the aforesaid ruling and the consequential orders thereto.
2. The application is premised on the grounds on the face of the Motion and is supported by an affidavit sworn on the same day by Mr. Ajay Kumar Jawla, the applicant herein, a Director of the Revere Technologies Limited, the registered owner of Motor Vehicle Registration No. KCX 783E Range Rover. He averred that the 1<sup>st</sup> respondent was employed by Revere Technologies Limited until her dismissal in September 2023, after which she took the company's motor vehicle, a Range Rover with registration number KCX 783E. He stated that at the said time, the company was still paying the



- vehicle's vendors the purchase price. He contended that the 1<sup>st</sup> respondent tried to coerce the vendors to transfer ownership of the vehicle to her by threatening to defame them on social media. He further averred that as the Director of Revere Technologies Limited, he reported the theft of the company's motor vehicle by the 1<sup>st</sup> respondent, leading to the police at Kilimani Police Station summoning both the 1<sup>st</sup> respondent and the vehicle's vendor to provide statements.
3. He stated that instead of complying with the Summons, the 1<sup>st</sup> respondent filed a civil suit being CMCOMM No. E889 of 2023 against the applicant and the vendor. That on 14<sup>th</sup> December 2023, the Trial Court delivered a ruling in favour of the 1<sup>st</sup> respondent, granting her possession of the vehicle which had by then been impounded and held at the Kilimani Police Station pending investigations. He asserted that he is aggrieved by the Trial Court's ruling and he intends to Appeal against it to the High Court albeit late. He stated that the delay in lodging the said Appeal was as a result of the Court Registry's failure to provide him with the Trial Court's ruling and proceedings. That despite several visits to the said Registry, the file was either missing or untraceable, and he only received a copy of the ruling and a Certificate of Delay on 3<sup>rd</sup> May 2024, after which he promptly filed the instant application.
  4. It is the applicant's contention that his Appeal has high chances of success, claiming that the Trial Court erred by requiring him to give evidence on behalf of Revere Technologies Limited, a separate legal entity, and by issuing a final order in an interlocutory application. The applicant claimed that the Trial Court's orders allowed the 1<sup>st</sup> respondent to assert rights over the motor vehicle in a criminal case where they are charged with theft. The applicant contended that the 1<sup>st</sup> respondent also illegally placed a caveat on the suit motor vehicle, by relying on the said orders. He asserted that granting the orders sought in the instant application would not prejudice the 1<sup>st</sup> respondent.
  5. In opposition thereto, the 1<sup>st</sup> respondent filed a replying affidavit sworn on 10<sup>th</sup> June 2024 by herself. She averred that she purchased the suit motor vehicle from the 2<sup>nd</sup> respondent, acting as an agent of the 3<sup>rd</sup> respondent vide a Sale Agreement dated 20<sup>th</sup> April 2023, when the vehicle was still registered in the 3<sup>rd</sup> respondent's name. She stated that at that time, she was employed by Revere Technologies Limited, and due to her close relationship with the company's sole Director, the applicant herein, she asked him to witness the Sale Agreement on her behalf. She claimed to have fully paid for the vehicle, after which the 2<sup>nd</sup> respondent requested for her ID and KRA pin for purposes of transferring the suit motor vehicle to her. She averred that by then, her relationship with the applicant had deteriorated, and she was no longer employed by his company. She averred that she later learnt that the applicant through collusion and intimidation of the 2<sup>nd</sup> & 3<sup>rd</sup> respondents, sought to block the transfer of the motor vehicle to her in an effort to frustrate her.
  6. As a result, she filed a civil suit being CMCOMM No. E889 of 2023 against the applicant and the 2<sup>nd</sup> & 3<sup>rd</sup> respondents, claiming ownership of the vehicle in issue. She also filed a Notice of Motion application seeking interim reliefs. She noted that Revere Technologies Limited was not initially involved in the case as it had no connection to the suit vehicle, but during the pendency of the said suit, the applicant coerced the 2<sup>nd</sup> & 3<sup>rd</sup> respondents to transfer the suit vehicle to Revere Technologies Limited, in an attempt to defeat the substratum of the aforesaid suit. The 1<sup>st</sup> respondent argued that the applicant never informed the Trial Court that the motor vehicle was registered in the name of his company, nor did the company seek to be joined in the suit. She averred that after her application for interim reliefs was heard, the Court granted her interlocutory reliefs against the applicant in his capacity as the sole Director of Revere Technologies Limited, and also against the 2<sup>nd</sup> & 3<sup>rd</sup> respondents.
  7. Ms. Kaaria further averred that the applicant neither sought a review of the said ruling nor lodged an Appeal against it, as instead, he filed a criminal complaint against her to undermine the civil Court's process and regain possession of the suit vehicle. That subsequently, the applicant used the criminal



Court to take the suit vehicle, which he now possesses. The 1<sup>st</sup> respondent contended that the applicant had no intention of appealing against the Trial Court's ruling until she filed judicial review proceedings in HJR E019 of 2024. The 1<sup>st</sup> respondent disputed the validity of the Certificate of Delay issued to the applicant herein, arguing that he has not provided evidence of any follow-up actions with the Court Registry or correspondence showing inquiries about the missing file, or any feedback confirming that the Trial Court file was missing.

8. In a rejoinder, the applicant filed a supplementary affidavit sworn on 8<sup>th</sup> July 2024 by Mr. Ajay Kumar Jawla, the applicant herein and a Director of Revere Technologies Limited. He stated that in the suit before the Trial Court, he was sued in his personal capacity for allegedly interfering with the transfer of the suit motor vehicle. He claimed that the Trial Court was presented with all the relevant documents and facts, including the fact that the vehicle had been transferred before the 1<sup>st</sup> respondent filed her suit, the registered owner of the suit vehicle was not included in the case, the 1<sup>st</sup> respondent was under investigation for theft, and that she had only filed the said suit to obstruct her criminal prosecution. Mr. Kumar stated that the Trial Court disregarded this information, leading to his decision to appeal against the Trial Court's ruling.
9. The 2<sup>nd</sup> respondent did not participate in these proceedings. On 6<sup>th</sup> June 2024, Mr. Ochieng, learned Counsel for the 3<sup>rd</sup> respondent indicated to Court that the 3<sup>rd</sup> respondent would not be opposing the instant application.
10. The application herein was canvassed by way of written submissions. The applicant's submissions were filed by the law firm of Kamenya & Co. Advocates on 16<sup>th</sup> July 2024, whereas the 1<sup>st</sup> respondent's submissions were filed on 12<sup>th</sup> August 2024 by the law firm of S. Kipkorir & Komen Law.
11. Mr. Mbugua, learned Counsel for the applicant cited the provisions of Section 79G of the *Civil Procedure Act* and submitted that this Court has the discretion to extend the time for filing an Appeal against the Trial court's ruling delivered on 14<sup>th</sup> December 2023. He indicated that the said ruling was delivered virtually, and that on 22<sup>nd</sup> December 2023, the applicant requested for a copy of it, and a copy of the Court proceedings to prepare an Appeal against it. He stated that the applicant only received the ruling on 3<sup>rd</sup> May 2024, after the 30-day Appeal period had elapsed. He submitted that obtaining a copy of the said ruling was necessary to ascertain whether any issues had been overlooked by the Trial Court and to draft a Memorandum of Appeal. He stated that the applicant has produced a Certificate of Delay demonstrating that he requested for a copy of the Trial Court's ruling in good time, but the Court Registry delayed in availing a copy of the same to him. He asserted that the appellant has an arguable Appeal with high chances of success that ought to be determined on merits.
12. Mr. Kipkorir, learned Counsel for the 1<sup>st</sup> respondent relied on the provisions of Section 79G of the *Civil Procedure Act*. He also relied on the case of Ndungu Muhindi James & another v Cecilia Wanjiku Waweru [2020] eKLR, and submitted that an application for extension of time to file an Appeal out of time should be made after the substantive Appeal has already been filed, as a Court cannot admit a non-existent Appeal. He disputed the applicant's reasons for the delay, claiming they were dishonest. He stated that when the Trial Court delivered its ruling on 14<sup>th</sup> December 2023, the Hon. Magistrate informed the parties that the ruling was typed and ready for collection, thus contradicting the Certificate of Delay. He argued that the applicant's delay in filing an Appeal against the subject ruling was unjustified, and the applicant does not deserve to be granted the orders sought herein.
13. Additionally, Mr. Kipkorir argued that the applicant has no legal standing to file the application on behalf of Revere Technologies Limited, a separate legal entity with a corporate legal personality, and contended that the appropriate course of action would have been for the company to file an application for review, not an Appeal. To buttress this submission, Counsel relied on the case of JMK v MWM



& another [2015] eKLR. He referred to the provisions of Order 42 Rule 6 of the Civil Procedure Rules, 2010, and the case of James Wangalwa & another v Agnes Naliaka Cheseto [2012] eKLR, and submitted that the applicant has not demonstrated that he will suffer any substantial loss in the event the instant application is disallowed to warrant being granted an order for stay of execution. He stated that there has been inordinate delay in filing the instant application, and the applicant has not offered any security to warrant being granted the orders sought.

### **Analysis And Determination.**

14. I have considered the application filed herein, and the affidavit filed in support thereof, the replying affidavit by the 1<sup>st</sup> respondent and the supplementary affidavit by the applicant. I have also considered the written submissions filed by Counsel for the parties. The issues that arise for determination are -
1. Whether the application for leave to file an Appeal out of time is merited; and
  2. Whether the applicant has satisfied conditions for being granted an order for stay of execution pending Appeal.

### **Whether the application for leave to file Appeal out of time is merited.**

15. 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 been 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.

16. The Supreme Court in the case of Naomi Wangechi Gitonga & 3 others v Independent Electoral & Boundaries Commission & 17 others [2018] eKLR, set out the guiding principles when it comes to extension of time, conditions which were also expressed in the case of Nicholas Kiptoo Korir Arap Salat v IEBC & 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 underlying principles that a Court should consider in exercise of such discretion:

1. 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;
2. a party who seeks...extension of time has the burden of laying a basis to the satisfaction of the Court;
3. whether the Court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
4. [where] there is a reasonable [cause] for the delay, the delay should be explained to the satisfaction of the Court;
5. whether there will be any prejudice suffered by the respondents if the extension is granted;
6. whether the application has been brought without undue delay; and,



7. whether in certain cases, like election petitions, public interest should be a consideration for extending time.
17. The Trial Court's ruling the applicant intends to Appeal against, was delivered on 14<sup>th</sup> December 2023. In line with the provisions of Section 79G of the *Civil Procedure Act* and the provisions of Order 50 Rule 4 of the Civil Procedure Rules, 2010, the applicant ought to have filed a Memorandum of Appeal on or before 5<sup>th</sup> February 2024. The applicant did not comply with the said provisions, and has now invoked this Court's discretion under the aforesaid provisions for extension of time within which to file an Appeal.
18. The Court of Appeal in *Muringa Company Limited v Archdiocese of Nairobi Registered Trustees* [2020] eKLR, discussed some of the factors to be considered by a Court in the exercise of its discretion as hereunder: -

Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of Appeal, the need to protect a party's opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the Appeal or intended Appeal; and whether, prima facie, the intended Appeal has chances of success or is a mere frivolity.
19. The instant application was filed on 23<sup>rd</sup> May 2024, approximately three and a half months after the elapse of the thirty days provided for by law. As a result, the applicant is obligated by law to provide a reasonable explanation for the delay in filing the Appeal within the prescribed timelines. That was the Court of Appeal's position in the case of *Abdul Azizi Ngoma v Mungai Mathayo* [1976] Kenya LR 61, at 62 where it held that –

We would like to state once again that this court's discretion to extend time under Rule 4 only comes into existence after 'sufficient reason' for extending time has been established and it is only then that other considerations such as the absence of any prejudice and the prospects or otherwise of success in the Appeal can be considered.
20. The applicant herein contended that the delay in filing an Appeal against the Trial Court's ruling was as a result of failure by the Court Registry to supply him with a typed copy of the said ruling and the Trial Court's proceedings, to enable him prepare for and file the said Appeal. He averred that despite several visits to the said Registry, the file was either missing or untraceable, and he only received a copy of the ruling and a Certificate of Delay on 3<sup>rd</sup> May 2024. In support of the said averments, the applicant produced a copy of a Certificate of Delay dated 7<sup>th</sup> May 2024 issued to him by the Milimani Commercial Chief Magistrate's Court. The said Certificate confirmed that the applicant made an application for certified proceedings and ruling on 22<sup>nd</sup> December 2023 expressing his desire to Appeal against the ruling delivered by the Trial Court on 14<sup>th</sup> December 2023, paid Court fees for the said documents on 15<sup>th</sup> February 2024 after the Court file was traced, and the aforesaid ruling was then forwarded to the applicant on 3<sup>rd</sup> May 2024.
21. Notably, in as much as the 1<sup>st</sup> respondent challenges the validity of the Certificate of Delay, she has not adduced any evidence in support of her allegation that the contents of the said Certificate are untrue. Further, I take judicial notice that it is not uncommon for Judicial Officers to deliver judgments and



rulings and take some time to clean up typographical errors, before availing typed and signed copies of the same to litigants. In the absence of any evidence to the contrary, this Court is inclined to believe the authenticity of the Certificate of Delay dated 7<sup>th</sup> May 2024 which is being relied on by the applicant in support of his application for extension of time to file an Appeal outside the prescribed timelines.

22. The applicant submitted that obtaining a copy of the Trial Court's ruling was necessary to ascertain whether any issues had been overlooked by the Trial Court and to draft a Memorandum of Appeal. It is however worth noting that despite the fact that the applicant received a copy of the said ruling on 3<sup>rd</sup> May 2024, he only filed the instant application on 23<sup>rd</sup> May 2024, approximately twenty (20) days later. From the pleadings and submissions filed on behalf of the applicant, no reasons whatsoever have been advanced to explain the delay in filing the instant application after receipt of the said ruling. This Court is bound by the Supreme Court decision in the case of Naomi Wangechi Gitonga & 3 others v Independent Electoral & Boundaries Commission & 17 others (supra), where it was held that extension of time is not a right of a party, as it is an equitable remedy that is only available to a deserving party at the discretion of the Court.
23. It is now well settled that equity only aids the vigilant and not the indolent. For that reason, the applicant had a duty to at the very least explain the delay in filing the instant application, to warrant this Court to consider exercising its discretion in his favour, and extend time for him to file an Appeal against the Trial Court's ruling delivered on 14<sup>th</sup> December 2023. In the premise, this Court finds that the applicant's delay gives credence to the 1<sup>st</sup> respondent's assertions that the applicant filed the instant application as a result of the 1<sup>st</sup> respondent filing judicial review proceedings in HJR E019 of 2024. Accordingly, this Court finds that there has been inordinate and unexplained delay in filing the instant application, therefore the applicant is guilty of laches.
24. As to whether the intended Appeal has any chances of success, I note that the applicant's Appeal is anchored on the fact that the orders granted against him are incapable of being executed since his company, Revere Technologies Limited is the registered owner of the suit motor vehicle, and the said company is not a party to this suit. Further, the applicant averred that the evidence required by the Trial Court could only be given by the said company, and as such, the Trial Court erred in requiring him to give evidence on behalf of Revere Technologies Limited, which is a company with corporate personality, capable of suing and being sued in its own capacity, and making orders against a party not involved in the suit.
25. It is evident from the foregoing that the applicant's contention is that he was wrongly sued, and that the 1<sup>st</sup> respondent ought to have sued Revere Technologies Limited, the registered owner of the suit motor vehicle. Consequently, I agree with the 1<sup>st</sup> respondent that the applicant has not demonstrated that he has an arguable Appeal with high chances of success to warrant this Court to exercise its discretion in his favour as the issue the applicant now intends to raise on appeal could have been addressed before the Trial Court as a Notice of Preliminary Objection.
26. In view of the foregoing, it is my finding that the applicant has not made out a case to warrant being granted an order for extension of time to file an Appeal out of time.
27. In the circumstances, this Court shall not consider the other issue it had earlier on identified for determination on stay of execution, since Court Orders are not given in vain and it would be an academic exercise to determine the said issue.
28. In the end, I find that the instant application lacks merits. It is hereby dismissed with costs to the 1<sup>st</sup> respondent.

It is so ordered.



**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 25<sup>TH</sup> DAY OF OCTOBER 2024.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:

Mr. Mbugua for the applicant

Mr. Wanyama for the 1<sup>st</sup> & 2<sup>nd</sup> respondents

No appearance for the third respondent

Ms B. Wokabi – Court Assistant.

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