



**BGP Kenya Limited v Mahia-Ni (Commercial Appeal E003 of 2024)  
[2024] KEHC 14114 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14114 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
COMMERCIAL APPEAL E003 OF 2024**

**FR OLEL, J**

**NOVEMBER 13, 2024**

**BETWEEN**

**BGP KENYA LIMITED ..... APPLICANT**

**AND**

**WILGRIDAH MACHANJA MAHIA-NI ..... RESPONDENT**

**RULING**

**A. Introduction**

1. The application before this court is the Notice of Motion application dated 16<sup>th</sup> September 2024 brought pursuant to provisions of Section 3, 3A, 63,79G of the *Civil Procedure Act*, Order 22 rule 22, Order 50 rule 6, Order 51 Rule 1 of the Civil Procedure Rules, and all other enabling provision of law. The applicant seeks orders that;
  - a. Spent
  - b. Spent
  - c. That the Honourable court be pleased to extend the time within which the parties are to comply with the conditions stipulated in the ruling dated 30<sup>th</sup> July 2024 by a further 14 days
  - d. That the costs of this Application be provided for.
2. The application is supported by the ground on the face of the said application and the attached supporting affidavit, while the respondent did oppose this Application through his replying Affidavit.
3. This Application was canvassed by way of written submissions.



## B. Analysis & Determination

4. I have carefully considered the Application, its supporting Affidavit, the response filed in opposition thereto, and the parties' respective submissions. The issue which arises for determination is whether this court should extend time within which parties shall comply with conditions stipulated in the ruling dated 30<sup>th</sup> July 2024 by a further 14 days or such other time as the court will allow.
5. Order 50 rule 6 of the civil procedure Rules does provides that;  

“ where a limited time has been fixed for doing any act or taking any proceedings under these rules or by summary notice or by order of the court, the court shall have powers to enlarge time upon such terms(if any) as the justice of the case may require, and such enlargement maybe ordered although the application for the same is not made until after the expiration of the time appointed or allowed.”
6. The Court of Appeal in the case of *Thuita Mwangi V Kenya Airways Ltd* [2003] eKLR discussed some of the factors that aid the Courts in exercising its discretion on whether to extend time. They include the following:
  - i) The period of delay;
  - ii) The reason for the delay;
  - iii) The arguability of the appeal;
  - iv) The degree of prejudice which could be suffered by the if Respondent the extension is granted;
  - v) The importance of compliance with time limits to the particular litigation or issue; and
  - vi) The effect if any on the administration of justice or public interest if any is involved.
7. The importance of giving a sufficient reason for the extension of time was discussed in the Court of Appeal case of *Susan Ogutu Oloo & 2 Others v Doris Odindo Omolo* (2019) eKLR where it was held:-  

“In an application for extension of time, the single Judge has discretion. I am aware that the discretion I have is to be exercised judiciously and not whimsically or capriciously. The guiding principles on the issue of extension of time were laid out by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v IEBC* (2014) eKLR Sup Ct Application No 16 of 2014.

The Supreme Court aptly stated extension of time is not a right of a party; a party who seeks extension of time has the burden of laying a basis to the satisfaction of the Court. Of paramount importance, the reason for delay must be explained to the satisfaction of the Court. Further, the application for extension must be brought without undue delay and it must be demonstrated if the respondent will not suffer prejudice if extension is granted”.
8. The court has considered the pleadings filed and it is clear that parties were in communication as to opening of a joint interest-earning bank account, and have the decretal sum deposited therein. The 45 days granted to have the money deposited lapsed on or about 16<sup>th</sup> September 2024, when this application was filed out of an abundance of caution. I find that the said application has merit and the orders sought will not prejudice the respondent.
9. The Court, in exercising its discretion, when confronted with such circumstances, also considers the “Oxygen principles” and should therefore always opt for the lower rather than the higher risk of



injustice and should make such orders as may be necessary for the ends of justice, which is to have the Appeal heard on merit.

**Disposition**

10. I do find that this application is merited and allow it on the following terms
- a. The time within which to deposit the decretal amount in a joint interest-earning account, as directed by this court ruling dated 16<sup>th</sup> September 2024 is hereby extended for another 14 days from the date of this ruling.
  - b. If the parties herein are unable to open the said joint bank account and deposit the money within the said extended period, the Applicant will after the 10<sup>th</sup> day deposit the said sum in court to avoid any excuse for not complying with prayer (a) above.
  - c. The costs of this Application will be in the cause.
11. It is so ordered.

**RULING WRITTEN, DATED AND SIGNED AT MACHAKOS ON THIS 13<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

**DELIVERED ON THE VIRTUAL PLATFORM, TEAM THIS 13<sup>TH</sup> DAY OF NOVEMBER, 2024.**

In the presence of: -

Mr. Kimani for Appellant

No appearance for Respondent

Susan/Sam Court Assistant

