



Ochieng v Co-operative Bank of Kenya Ltd (Miscellaneous Civil Application E025 of 2024) [2024] KEHC 15500 (KLR) (4 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15500 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
MISCELLANEOUS CIVIL APPLICATION E025 OF 2024**

A. ONG'INJO, J

DECEMBER 4, 2024

BETWEEN

JACOB OPIYO OCHIENG APPLICANT

AND

CO-OPERATIVE BANK OF KENYA LTD RESPONDENT

RULING

1. The Applicant approached this court vide application dated 3.6.2024 seeking for orders of temporary injunction against the Respondent, her agents, employees, representatives assigns and workers barring them from selling by way of public auction or in any manner the Applicants land parcel No Suna East / Kakarao / 3992 and 4107 pending hearing and determination of the application herein. The Applicant also sought for leave to appeal out of time against the ruling delivered on 21.12.2023 in Migori CMCC No E207 of 2022. The Applicant also sought for costs of the application.
2. The Application was premised on the grounds on its face and in the supporting affidavit of Jacob Opiyo Ochieng the Applicant herein. The Application is brought pursuant to Sections 3, 3A, 63 and 75 of the *Civil Procedure Act* and Order 42 and 43 of the *Civil Procedure Rules*.
3. The Applications was canvassed by way of written submission. The Applicants submissions are dated 25.10.2024 was filed on 29.10.2024
4. The Applicant submitted that the interlocutory injunction sought is intended to preserve the subject properties pending determination of the intended appeal and that raises a prima facie case.
5. It was also argued that the Applicant will suffer irreparable harm if the orders sought are not granted as his family home is situated in the property that the Respondents intends to sell. It was submitted that if sale proceeds the Applicants family will be evicted and that is an eventuality that cannot be compensated by an award of damages.



6. That in consideration of the reasons given by the Applicant the balance of convenience tilts in his favour and the court should exercise the discretion to grant temporary injunction.
7. On the application for grant of leave to appeal out of time the Applicant argued that instructions to appeal were given to his advocate after expiry of the statutory period and he urged the court to exercise the discretion pursuant to Section 95 of the Civil Procedure Act.
8. The Respondents submissions are dated 30.8.2025. It is argued that whenever an application for extension of time is before court the factors to be considered include the period of delay, the reasons for delay, the degree of prejudice to the Respondent if the leave is granted and whether the matter raises issues of public importance as per the late Odek JA, in Edith Gichungu Koine v Stephen Njagi Thoithi [2014] eKLR
9. The Respondents also fortified their positions with the holding in Thuita Mwangi v Kenya Airways Limited (2003) eKLR in which the elements to consider in granting leave to appeal out of time were restated.
10. The Respondents further submitted that an Applicant for extension of time must show good and substantial reasons for the delay and prima facie good cause why the intended appeal should be heard. That the Applicant must show that there is justification to appeal out of time and also that the grounds of appeal are arguable. This was cited from Court of Appeal case of Njoroge v Kimani (Civil Application No E049 of 2022) [2022] KECA 1188 (KLR) (28.10.2022)
11. The Respondents submitted that the Applicant did not give evidence in form of treatment notes, medical Report receipts or any evidence to show he was indeed unwell and therefore could not give instructions to his Advocate to file appeal on time.
12. The Respondents argued that the delay was deliberate as the Applicant and his counsel were aware of the judgment and ought to have acted on time lines which was 21.1.2024. That the delay of approximately 165 days was in excusable and no explanation has been provided for it.
13. The respondents contended that the Applicant had the tendency of applying delay tactics meant to defeat the Respondents right to exercise statutory power of sale which had crystallized.
14. That for a period of 11 months the Applicant failed to respond to the application which ruling he now seeks to appeal. That the conduct of the Applicant through his advocate depleted lack of seriousness to dispose of the matter and expeditiously.
15. The Respondent argued that the Application is frivolous, vexatious and an abuse of the court process and should be dismissed.
16. The prayers sought by the Applicant are both discretionary in nature and are supposed to be exercised judiciously based on good judgment and based on available evidence / material on record. As stated by Respondent's counsel the reason given for delay in lodging appeal on time after the impugned ruling was delivered on 21.12.2023 has not been exhibited by the Applicant.
17. However, I have seen the ruling against which the intended appeal is to be filed as well as the draft memorandum of appeal and I do find that the same raises arguable issues and therefore grant leave to the Applicant to appeal out of time within a period of 14 days.
18. As regards application for orders of temporary injunction, since the court has granted leave to the Applicant time to appeal out of time the appeal will be rendered nugatory if the property which is the subject of the intended appeal is not preserved. Orders of temporary injunctions are therefore granted



pending the hearing and determination of the intended Appeal if the Applicant meets the conditions set by the court.

19. The Applicant to expediate the filing and prosecution of his appeal.

20. No orders as to costs.

DELIVERED DATED AND SIGNED AT MIGORI THIS 4TH DAY OF DECEMBER, 2024.

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A. ONG'INJO

JUDGE

Judgment delivered in the presence of

