



**Scania Credit Solutions (Proprietary) Limited Dreamline Express
Limited v Godfrey (Miscellaneous Application E025 of 2024)
[2024] KEHC 15742 (KLR) (13 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15742 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS APPLICATION E025 OF 2024
AN ONGERI, J
DECEMBER 13, 2024**

BETWEEN

**SCANIA CREDIT SOLUTIONS (PROPRIETARY) LIMITED DREAMLINE
EXPRESS LIMITED APPLICANT**

AND

HUMPHREY LOWO GODFREY RESPONDENT

RULING

1. The application coming for consideration in this Ruling is the one dated 23rd August, 2024 brought under Section 3A, 79G and 95 of the *Civil Procedure Act* (Cap 21), Order 22 rule 22, Order 42 Rule 6, Order 50 rule 6 and Order 51 Rules 1 and 3 of the *Civil Procedure Rules* 2010 and all other enabling provisions of the Law seeking leave to appeal out of time and stay of execution pending appeal.
2. The application is based on the following grounds:-
 - i. That judgment in Voi CMCC NO. E111 of 2022 was delivered on 28th May 2024.
 - ii. That the Applicants being aggrieved by the said judgment on the issue of quantum and liability seek leave to appeal out of time.
 - iii. That the delay in filing the appeal was occasioned by the late issuance of instructions by the Applicants to file the appeal.
 - iv. Similarly the delay in filing the appeal was occasioned by the delivery of the Ruling on costs on the 31st day of July 2024.
 - v. That the Applicants' insurer has been unable to settle the decretal amount since their accounts have been frozen by the Insurance Regulatory Authority.



- vi. This application is timely made and without any unnecessary delay.
 - vii. The Applicant stand to suffer substantial and irreparable loss and damage as there is a likelihood that the Applicant will be unable to recover the decretal sum awarded herein from the Respondent.
 - viii. Unless this application is allowed, the Applicants' intended appeal will be rendered nugatory.
 - ix. The Applicant has a good arguable appeal which has high chances of success.
 - x. The Respondent will not suffer any prejudice or any damage that cannot be compensated by way of costs if this application is allowed.
3. The application is supported by the affidavit of Billy Ndolo sworn on 23rd August 2024.
 4. The Respondents opposed the application vide his Replying Affidavit dated 26th September 2024 and the parties filed written submissions which I have duly considered.
 5. The issues for determination in this application are as follows:-
 - i. Whether the Applicant should be granted leave to appeal out of time.
 - ii. Whether the Applicant should be granted stay of execution pending appeal.
 6. Section 79G of the *Civil Procedure Act* provides that:

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.
 7. The Supreme Court in the case of *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others*, SC Appl 16/2014 laid down the following as the underlying principles that a court should consider in the exercise of discretion to extend time:-
 - 1) 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) The party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court
 - 3) As to whether the court should exercise the discretion to extend time, is a consideration to be made on a case bass;
 - 4) Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court.
 - 5) Whether there will be any prejudice to be suffered by the respondents if the extension is granted.
 - 6) The application should have been brought without undue delay; and
 - 7) In certain cases, like election petitions, public interest should be considerations for extending time.



8. The circumstances under which the court will grant stay of execution pending appeal are clearly set out in Order 42 Rule 6 of the [Civil Procedure Rules](#) which enact:
 1. No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but; the court appealed from may for sufficient cause order stay of execution of such decree or order.
 2. No order of stay of execution shall be made under Sub Rule (1) unless –
 - a) The court is satisfied that substantial loss may result to the applicant unless the order is made and that
 - b) The application has been made without unreasonable delay; and
 - c) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
9. I find that this court has discretion to grant the applicant leave to appeal out of time.
10. I find that there are plausible reasons for the delay.
11. I allow the application dated 23rd August 2024 on condition that the applicant deposits half the decretal sum in court within 45 days of this date.
12. The appeal to be filed within 30 days of this date.
13. The applicant to pay the costs of the application assessed at Kshs. 5,000 within 30 days of this date.

DATED, SIGNED AND DELIVERED THIS 13TH DAY OF DECEMBER 2024 IN OPEN COURT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistants: Maina/Trizah

