Kinatwa Sacco Society Limited & another v Mwonga (Miscellaneous Application E027 of 2025) [2025] KEHC 14466 (KLR) (Civ) (14 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14466 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

MISCELLANEOUS APPLICATION E027 OF 2025

AC MRIMA, J

OCTOBER 14, 2025

BETWEEN

KINATWA SACCO SOCIETY LIMITED .... 1ST APPLICANT

AMOS MUTEMI WAMBUA .... 2ND APPLICANT

AND

EZEKIEL MAMBO MWONGA .... RESPONDENT

RULING

1. This ruling relates to two applications by way of Notices of Motion dated 8th May 2025 (hereinafter referred to as 'the original application') and 13th May 2025 (hereinafter referred to as 'the responding application') respectively. The original application sought for leave to appeal out of time and a stay of execution of the ruling and orders of the Co-operative Tribunal at Nairobi (hereinafter referred to as 'the Tribunal') issued on 27th March 2025.

2. The original application was filed under a certificate of urgency and sought for interim orders of stay of the ruling and orders in the first instance. The said orders were granted by this Court on 8th May 2025. Reacting to the original application, the Respondent filed the responding application wherein he sought to set-aside, vary or discharge the interim orders. By the directions of this Court, the responding application was deemed as the response to the original application and parties filed their respective written submissions, hence this consolidated ruling.

3. The background to this matter is briefly that on 20th December 2024, Ezekiel Mambo Mwonga, the Respondent herein, being a member of the Kinatwa Sacco Society Limited and the owner of a Public Service Vehicle registration number KCL 492R instituted proceedings before the Tribunal at Nairobi in Tribunal Case No. E1035 of 2024 (hereinafter referred to as 'the suit') against Kinatwa SACCO Society Limited and Amos Mutemi Wambua resulting from the failure and/or refusal by the

Applicants to apply for the Respondent's Road Service License (RSL) so as to enable him operate his motor vehicle as intended. As a result of the alleged failure, the Respondent pledged loss of income.

4. The Respondent filed the suit contemporaneously with an interlocutory application where he sought interim reliefs pending the hearing of the main dispute. The Tribunal issued ex-parte orders on the 24th December 2024 which orders were confirmed on 27th March 2025 upon an inter-partes hearing. It is the confirmation of the orders that upset the Applicants who are now intent on lodging an appeal.

5. In the suit, in urging the grant of the orders, the Respondent vehemently averred that he was a member of the Sacco and that he was wrongfully denied the right to have his vehicle operate as a public service vehicle thereby occasioning him loss of income. The Applicants opposed the application alleging that it was an abuse of Court process since the Respondent had not made full disclosure. They claimed that the Respondent had sold the subject motor vehicle thereby relinquishing his membership. They also asserted that the Respondent did not participate in the AGM of 16th March 2024 and that he had voluntarily removed the vehicle from the SACCO. Additionally, they stated that the motor vehicle did not meet the specifications as to make him a member and the Sacco's failure to apply for the said vehicle's RSL was lawful.

6. In the impugned ruling, the Tribunal observed that the Respondent had presented preliminary evidence confirming his membership with the Applicant Sacco and ownership of the motor vehicle and found that the balance of convenience tilted in the favour of the Respondent since no prejudice would be suffered by the Applicants if the motor vehicle was cleared to go back to the road. Accordingly, it ordered the Applicants to apply for the RSL pending the hearing of the suit.

7. It was the foregoing genesis that found the parties before this Court.

8. Back to the original application, in the grounds and Affidavit in support thereof, it was deposed that the impugned ruling was never communicated in time to the Applicants and they only got to know about it after the lapse of 30 days. It was their position that there was imminent threat and risk of contempt of the orders in the ruling yet they intend to file an appeal which has a high chance of success. The Applicants claimed that given the uncertainty of the Respondent's membership, the implementation of the orders in the ruling will contravene Section 26 of the National Transport and Safety Authority and Regulation 5(1) of the National Transport and Safety Authority (Operation of Public Service Vehicles Regulations 2014. They further asserted that the implementation will expose them to criminal offences and penalties.

9. In their submissions dated 10th June 2025, the Applicants claimed that under Order 50 Rule 6 of the Civil Procedure Rules, this Court has the power to enlarge time upon such terms as justice of the case may require provided costs are borne by the party making the application. The Applicants called to their aid the decision in Leo Sila Mutiso -vs- Rose Hellen Wangari Mwangi (1999) 2 EA 231 as well as the one in Andrew Kiplagat Chamaringo -vs- Paul Kipkorir Kibet (2018) eKLR where the exercise of discretion was discussed in the enlargement of time. in the latter case it was observed: -

> .... The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay us the key that unlocks the court's flow of discretionary power.

10. The Applicants also submitted that they had no knowledge of the delivery of the ruling and averred that even their then Advocates on record did not inform them of the delivery. They submitted that if at all their then Advocates erred in their professional duties, then the mistakes of their Advocates should not be visited on them. It was their position that they lodged the original application without

undue delay and argued that under section 81 of the *Co-operative Societies Act*, there is room for a party to appeal out of time.

11. While urging the Court to grant stay of execution, the Applicants relied on the case of RWW -vs- EKW (2019) eKLR where it was observed that stay is granted to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safe guarded. The Applicants reiterated that the implementation of the orders of 27th March 2025 would contravene the provisions of the *National Transport and Safety Authority Act* and the law in general.

12. As stated above, the response to the original application was the responding application. In its grounds and Affidavit in support, the Respondent stated that there was deliberate concealment and suppression of material facts and information by the Applicants herein that led to the issuance of the stay orders which were aimed at delaying and obstructing justice. He claimed that he continues to suffer economic loss as a result of the fabricated information including the fact that he had sold the motor vehicle and that he had ceased being a member of the SACCO when in fact he was a committee member of the SACCO alongside with the 2nd Applicant.

13. It was his case that he had been unilaterally blocked from participating in the Annual General Meeting thus preventing him from being re-elected a committee member. He asserted that he had been contributing his monthly shares of Kshs. 2,000/- as per the 1st Applicant's by-laws and the 2nd Applicant knew that only the members are eligible to be committee members of the 1st Applicant. He averred that all the documents alleging caseation of his membership were served after he instituted the suit. He further stated that the claim that the Tribunal's decision would offend section 26 of the National Transport and Safety Authority and Regulation 5(1) of the National Transport and Safety Authority (Operation of Public Service Vehicles Regulations 2014 was false and misleading and was a claim that could not be introduced at this stage since it was not made before the Tribunal.

14. The Respondent deposed that this Court has no jurisdiction to license matatus to operate as Public Service Vehicle since such is a mandate of the National Transport and Safety Authority.

15. The Respondent further stated that the intended appeal was in bad faith only intended to frustrate and delay the implementation of the Tribunal Orders. On the delay, he asserted that the orders being appealed against were first issued on 24th December 2024 and dually served upon the Applicants and their Application to have the same discharged through the Notice of Motion Application dated 2nd January 2025 was declined on 4th January 2025. He averred that the Ruling of the Tribunal of 27th March 2025 was delivered in presence of the Applicants' Advocates and they could not claim to be unaware of the of it. Further, he asserted that it was uploaded to the Judiciary's Case Tracking System (CTS) on or before 14th April 2025 where Advocates for both parties have equal and instant access to Court documents. The Respondent stated that the orders of the Tribunal are not final since they can be reversed on appeal without any cost to the Applicants and reiterated that unless the orders he was seeking are granted, he will continue to suffer great prejudice.

16. The Respondent filed written submissions dated 13th June 2025. He identified the issues for determination as; whether there is a competent application; whether the Applicants' have met the threshold to warrant the court to exercise its discretion and whether the applicants have met the prerequisite for grant of stay of execution pending appeal.

17. On the first issue, it was his case that the application is defective, incompetent as it has been brought under Section 81 of Co-operative Tribunals Act, which is a non-exiting law. He submitted that if the Applicants were desirous to move the Court to seek leave to file an appeal out of time, they ought to have filed an application under section 79A of *Civil Procedure Act*. The Respondent submitted that

the Respondent was in contempt of court orders of 24th December 2024 and as such had no audience. He stated that the Applicants were ordered by the Co-operative Tribunal on 24th December 2024 to renew the RSL. He claimed that the said orders were served on them and instead of complying with the orders, they made an application on 2nd January 2025, seeking to lift/discharge/set aside the said orders. When the matter came up for direction on 15th May 2025, the said orders were extended and Applicants directed to renew the RSL. Six months since then, they have not complied with the Tribunal orders nor did they appeal the same within the timelines.

18. He further submitted that on 27th March 2025, for the 3rd time and in the presence of the Applicants' Advocate, the Orders issued on 24th December 2024 were confirmed and Applicants directed to comply. He asserted that the Applicants have no audience before this Court until they purge the contempt.

19. On the second issue, the Respondent submitted that the Applicants had not met the conditions that were set in the case of Nicholas Kiptoo Korir Arap Salat -vs- IEBC and 7 Others [2014] eKLR for leave to appeal out of time. It was his position that they had not demonstrated what made them deserving of the extension. They had not explained the delay.

20. In rebutting the claim that the Applicants will be in violation of the law in taking out the RSL, the Respondent submitted that his vehicle was inspected on 3rd November 2024, and licensed to operate as a matatu by National Transport and Safety Authority (NTSA) a fact the Applicants are aware of. Additionally, he submitted that the Applicants' responsibility is to apply for the RSL for their members and the decision to issue the RSL is of NTSA which is done to qualified and licensed vehicles. He submitted that he stands to suffer irreparable prejudice and loss should this Court allow the original application as his motor vehicle is still grounded as it cannot lawfully operate without the RSL.

21. On the issue of grant of stay, the Respondent argued that the Applicants had not demonstrated how they will suffer substantial loss if orders of the Co-operative Tribunal are executed. Similarly, it had not shown how execution of the orders would render the intended appeal nugatory. Support to that end was drawn from the decision in the case of James Wangalwa & Another -vs- Agnes Naliaka Cheseto [2012] KEHC 1094 (KLR) where it was observed:

    11. No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss...... under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail...

22. The Respondent decried that the Applicants were engaged in a delaying tactics, to buy time and ensure that his sticker and license for this year expires before renewing the RSL, after which the renewal of the same will become untenable. He argued that the original application is both pre-mature and unarguable since the Tribunal is yet to determine a single issue to necessitate the intended appeal and the invitation by the Applicant to determine that issue before the same is heard and determined on merit by the Co-operative Tribunal thereby they were misusing of the Court process.

23. In conclusion, the Respondent urged this Court to dismiss the original application with costs and direct that the orders of the Tribunal be complied with by allowing the responding application.

24. In rebutting the claim on material non-disclosure, the Applicants submitted that their conduct did not amount to any material non-disclosure since the arguments are based on issues to be addressed in the main appeal.

25. Having appreciated the tenor and content of the two applications, the supporting affidavits as well as the rival submissions, the two main issues that emerge for determination are: -

    i. Whether the original application meets the threshold for enlargement of time.

    ii. Whether the quest for stay of execution of the orders of 24th December 2024 and 27th March 2025 is merited.

26. On whether the original application meets the threshold for enlargement of time, the timelines within which a party aggrieved by a decision of a Tribunal must lodge their appeal to the High Court is provided in section 81(1) of the *Co-operative Societies Act* as follows: -

    81. Appeal to High Court

        (1) Any party to the proceedings before the Tribunal who is aggrieved by any order of the Tribunal may, within thirty days of such order, appeal against such order to the High Court

        Provided that the High Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.

27. The above provision has it that the 30 days window prescribed therein is not cast in stone. The High Court may exercise its discretion and extend time for an appeal to be lodged in appropriate instances.

28. The timely filing of an appeal has significant jurisdictional implication. The Supreme Court in Nick Salat -vs- Independent Electoral and Boundaries Commission & 7 others (Application 16 of 2014) [2014] KESC 12 (KLR) approvingly referred to the decision of the Supreme Court of California in Silverbrand -vs- County of Los Angeles [2009] 46 Cal. 4th 106 where the following was said: -

> .... As noted by the Court of Appeal, the filing of a timely notice of appeal is a jurisdictional prerequisite.
>
> Unless the notice is actually or constructively filed within the appropriate filing period, an appellate court is without jurisdiction to determine the merits of the appeal and must dismiss the appeal.
>
> (Sic) The purpose of this requirement is to promote the finality of judgements by forcing the losing party to take an appeal expeditiously or not at all.

29. Drawing from the above, the limitation imposed on the time within which to file an appeal yields the desired objective of allowing a successful party to enjoy the fruits of judgment essentially bringing litigation to an end. Further, in the Nick Salat case [supra], the Apex Judges discussed the significance of imposition of timelines in the following manner: -

> .... Time is a crucial component in dispensation of justice, hence the maxim: Justice delayed is justice denied. It is a litigants' legitimate expectation where they seek justice that the same will be dispensed timeously. Hence, the various constitutional and statutory provisions on time frames within which matters have to be heard and determined.

30. Therefore, before granting leave to enlarge time, a Court must strike a fair balance between expeditious disposal of cases and an aggrieved party's right of appeal. As regards the principles applied by a Court,

decisions are rife. Enlargement of time is not a matter of right. Court exercise discretion. In the Nick Salat case [supra] the Supreme Court observed as follows: -

> ... Extension of time being a creature of equity, one can only enjoy it if he acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it.

31. In Paul Wanjohi Mathenge -vs- Duncan Gichane Mathenge [2013] eKLR the Supreme Court referred to the Court of Appeal decision where the appellate Court laid out the principles to be satisfied in the following terms: -

> .... I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance
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> For instance, in Leo Sila Mutiso -vs- Rose Hellen Wangari Mwangi - Civil Application No. Nai. 255 of 1997 (unreported), the Court expressed itself thus: -
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> ... It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted."(underline mine)

32. The Court then crystallized the principles as follows;

> .... 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; A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court; Whether there will be any prejudice suffered by the respondents if the extension is granted; Whether the application has been brought without undue delay; and Whether in certain cases, like election petitions, public interest should be a consideration for extending time

33. Having laid out the guiding principles, I now pit them against the facts of the case. The ex-parte orders were rendered on 24th December 2024 and were confirmed on 27th March 2025. The Applicants, therefore, had up to the 26th April 2025 to lodge an appeal against the confirmed orders. The original application was filed on 8th May 2025 thereby out of time by less than 11 days. The Applicants claimed that the reason for the delay was their failure to be made aware of the impugned ruling by their Advocates. The Respondent's on their part contended that the Applicants Advocate was in Court when the ruling was rendered to both parties.

34. The record speaks for itself. It is affirmed that one Mr. Muriyo was present for the Respondent while Mr. Kamwendwa for the Applicants when the orders were confirmed. Therefore, the Applicants were properly represented. Despite the foregoing, this Court holds the position that a period of one week is

not inordinate delay. As regards the third principle, this Court takes the view that enlarging time, in the circumstances of this case, will not occasion any prejudice to the Respondent. Similarly, the grounds of appeal raise triable issues. This Court ought not stifle the Appellants right of appeal. The Court, hence, finds favour in extending time to lodge the appeal out of time.

35. The second issue is whether a stay of execution of the orders of 24th December 2024 and 27th March 2025 is merited. The principles for granting stay of execution is provided for in Order 42 rule 6 (2) of the Civil Procedure Rules.

36. In James Wangalwa & another -vs- Agnes Naliaka Cheseto Misc. Application No. 42 of 2011 [2012] eKLR, the Court discussed substantial loss as follows;

> ... No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process.
>
> The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail, a question that was aptly discussed in the case of Silverstein -vs-. Chesoni [2002] 1KLR 867, and also in the case of Mukuma -vs-. Abuoga quoted above. The last case, referring to the exercise of discretion by the High Court and the Court of Appeal in the granting stay of execution, under Order 42 of the CPR and Rule 5(2) (b) of the Court of Appeal Rules, respectively, emphasized the centrality of substantial loss thus:
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> ...the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.

37. In this case, the Applicants have contended that they will flout the law if they proceed to make the application for the Respondent's RSL. To this Court, the said claim is unmerited since the buck stops with the National Transport and Safety Authority. As correctly pointed out by the Respondent, once the Applicant makes the application, the NTSA will decide, based on the documents presented, whether to grant the RSL or not.

38. The Court of Appeal in Pauline Yebei & Another v estate of Kiprotich Letting represented by Andrew Kipkoech Kiprono [2017] eKLR referred approvingly to its earlier decision in Ishmael Kagunyi Thande Vs. Housing Finance Kenya Ltd., Civil Application No. Nai 157 Of 2006 (unreported) in discussing stay of execution as follows: -

> ... The jurisdiction of the Court under rule 5(2) (b) is not only original but also discretionary. Two principles guide the court in exercise of that jurisdiction. These principles are well settled. For an applicant to succeed he must not only show that his appeal or intended appeal is arguable, but also that unless the court grants him an injunction or stay as the case may be, the success of that appeal will be rendered nugatory.

39. In this instance, were the Applicants to make the application and if its eventually allowed by the NTSA, still the success of the Applicants' appeal, if it so happens, would not rendered academic since the Respondent will simply cease running business under the SACCO and the Applicants discharged from engaging with the Respondent. Conversely, the Applicants' failure to make the application

will compound the Respondent's loss if the appeal is to be eventually declined. It is in this Court's assessment that it is fair and just for the Applicants to make the application which will in any event be determined by NTSA pending the determination of the intended appeal.

40. Turning to the issue of security for due performance of the decree, as this Court has found that Applicants will not suffer any prejudice if they make the requisite application, the need for the fulfilment of this requirement in the circumstances of the case does not arise. As regards delay, this Court has already established that there it was not inordinate delay. As such, this Court finds no merit in the quest for stay of execution.

41. Having considered the two applications above, the following final orders herby issue: -

(a) The Notice of Motion dated 8th May 2025 is allowed to the extent that leave to appeal out of time is hereby granted. The Applicants shall file and serve a Memorandum of Appeal in a substantive appeal file within 14 days of this order.

(b) The stay orders issued on 8th May 2025 by this Court are hereby set aside and/or discharged accordingly.

(b) For avoidance of doubt, an order hereby issues directing the Applicants to apply for the Respondent's Road Service Licence (RSL) forthwith, as was ordered by the Tribunal on 24th December 2024 and on 27th March 2025.

(c) Each party to bear its own costs of the applications.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 14TH DAY OF OCTOBER, 2025.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Ms Adhiambo, Learned Counsel for the Applicants.

Mr. Muringo, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.