



Uwowa Savings and Credit Cooperative Society Limited v Kagasa (Suing as the Legal Representative of the Estate of Collins Jumba (Deceased)) (Civil Appeal E064 of 2024) [2026] KEHC 639 (KLR) (26 January 2026) (Ruling)

Neutral citation: [2026] KEHC 639 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CIVIL APPEAL E064 OF 2024
JN KAMAU, J
JANUARY 26, 2026**

BETWEEN

UWOWA SAVINGS AND CREDIT COOPERATIVE SOCIETY LIMITED APPELLANT

AND

ERICK ALUMASA KAGASA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF COLLINS JUMBA (DECEASED)) RESPONDENT

RULING

Introduction

1. In its Notice of Motion dated 10th March 2025 and filed on 11th March 2025, the Appellant herein sought a further extension of time to comply with all the terms of the Ruling in Vihiga HCCC Misc No E003 of 2021 Uwowa Savings and Credit Cooperative Society Ltd vs Eric Alumasa Kagasa (Suing as Legal Representative of the Estate of Collins Jumba (Deceased)).
2. The Appellant's manager, Vincent Nzomo Kimongo, swore an affidavit in support of the said application. The Appellant averred that Judgment in Vihiga PMCC No 74 of 2019 was delivered on 30th July 2021 for Kshs 1,105,805.40 plus costs and interests. It added that being aggrieved with the said decision and having been granted leave to file appeal in Vihiga HCCC Misc No E003 of 2021 Uwowa Savings and Credit Cooperative Society Ltd vs Eric Alumasa Kagasa (Suing as Legal Representative of the Estate of Collins Jumba (Deceased)), it proceeded to file the Appeal herein.
3. It contended that it inadvertently failed to comply with the conditions as set out in the Ruling of 30th October 2024 in Vihiga HCCC Misc No E003 of 2021 Uwowa Savings and Credit Cooperative Society Ltd vs Eric Alumasa Kagasa (Suing as Legal Representative of the Estate of Collins Jumba (Deceased)), as it did not get a copy of the Ruling in good time since the same took time to be uploaded



on the CTS and efforts by the office assistant to get the same in the registry proved futile until sometime in the month of February, 2025.

4. It argued that for it was necessary for it to enclose a copy of the said Ruling of 30th October 2024 for ease of compliance by the insurer, of the terms given by the court. It added that even after obtaining a copy of the Ruling, the application could not be filed at the earliest because the transition from the firm of advocates that was previously on record and the incoming firm of advocates coupled with the internal wrangles between Directline Insurance Company Limited and its shareholders led to system failure and freezing of its financial accounts, thus causing a delay in the processing of payments of any court documents. It pointed out that the said wrangles gave rise to a court case Nairobi HCCC No E328 of 2024 (Commercial and Tax Division).
5. It further averred that the substratum of the appeal herein would be rendered nugatory if the orders it had sought were not granted because there was likelihood of the Respondent proclaiming, attaching and selling its property in execution of the decree as he had already applied for warrants of attachment of sale of its subject Motor Vehicle.
6. It asserted that the explanation of the delay was excusable and that the Respondent being a person of straw, he would not be in a position to make good any loss or damage it incurred or suffered if the Appeal herein ultimately succeeded. It added that this court could allow its insurer, by dint of its rights of subrogation to furnish the court with security by depositing half of the decretal amount in court within a specified period.
7. It further contended that the grant of the orders that it had sought herein would not prejudice the Respondent but that it stood to suffer great prejudice should it not be allowed to ventilate its appeal. It added that this court had the inherent power to grant the orders sought.
8. Okwaro Winnie Anono, the Respondent's Advocate swore a Replying Affidavit on 14th March 2025 in opposition to the Appellant's application. The same was filed on 21st March 2025.
9. The Respondent averred that the Appellant's application was destitute of merit, misplaced and brought in bad faith with the aim of delaying the cause of justice. He stated that the Appellant was forum shopping as this court already granted stay orders in Vihiga HCCC Misc No E003 of 2021 Uwowa Savings and Credit Cooperative Society Ltd vs Eric Alumasa Kagasa (Suing as Legal Representative of the Estate of Collins Jumba (Deceased), which orders were never complied with. He added that this application was a means to further delay him from enjoying the fruits of the judgment that was delivered on 30th July 2021.
10. He was categorical that the very conduct of the Appellant was a display of the continued disobedience and non-compliance with the orders of this court. He explained that the Appellant filed an application seeking leave to be granted leave to file an appeal which orders were granted on 24th March 2023, it then filed an application to extend time granted by the court on the order granted on the said 24th March 2023, which orders it was granted on 30th October 2024. He added that having failed to comply with the said orders, the Appellant filed the instant application.
11. He asserted that whilst the Appellant indicated that it made efforts to obtain the Ruling, the CTS reflected that it only uploaded a request for the same on 11th March 2025 and had never paid for the same despite it saying that the same was done earlier. He asserted that the recording of the virtual proceedings of this court on 11th February 2025 when Vihiga HCCC Misc No E003 of 2021 Uwowa Savings and Credit Cooperative Society Ltd vs Eric Alumasa Kagasa (Suing as Legal Representative of the Estate of Collins Jumba (Deceased) came up for compliance indicated that representative from the Appellant's Advocate's firm was in attendance but avoided attending to the same.



12. He further contended that the Appellant's counsel then was still seized with proper instructions to act in the matter. He argued that this court having made a Ruling on the issue of stay and enlargement of time in Vihiga HCCC Misc No E003 of 2021, it was now functus and ought not to entertain the instant application.
13. He argued that whilst the Appellant continued to enjoy interim orders of stay for four (4) years, he continued to be denied his fruits of litigation. He asserted that while the Appellant claimed to be still keen to prosecute the Appeal, he had not demonstrated any attempts of even obtaining proceedings with a view of compiling a record of appeal. He added that it had also not demonstrated any attempt to comply with the Ruling, even by paying the thrown away costs as ordered.
14. He was emphatic that the Appellant's application was frivolous, bad in law and guilty of laches and that the Appellant had moved the court with unclean hands. He urged the court not to be seen to assist the indolent and emphasised that litigation must come to an end.
15. The Appellant did not file any Written Submissions. The Respondent's Written Submissions were dated 13th May 2025 and filed on 15th May 2025. The Ruling herein is, therefore, based on parties' affidavit evidence and the said Respondent's Written Submissions only.

Legal Analysis

16. The Respondent reiterated his averments and emphasised that this court was functus officio and as such lacked the jurisdiction to entertain the orders sought herein. He placed reliance on the cases of *Telcom Kenya Ltd vs John Ochanda* (Suing on his behalf and on behalf of 996 former employees of Telcom Kenya Ltd[2014]eKLR, *ICEA Lion General Insurance Co Ltd vs Julius Nyaga Chomba*[2020]eKLR and *Jersey Evening Post Limited vs Al Thani* [2002] JLR where the common thread was that the purpose of the doctrine of functus officio was to provide finality, and that once proceedings were concluded, the court could not review or alter its decision but rather, any challenge to its ruling on adjudication had to be taken to a higher court if that right was available.
17. He contended that the instant application did not raise any new issues which had not been previously adjudicated upon by this very court which resulted in the orders of 30th October 2025 giving conditional stay orders. He asserted that as the Appellant had failed to satisfy the said set conditions, the stay lapsed. He questioned whether this court was in the business of giving orders even after parties were in contempt. He placed reliance on the case of *Owners of Motor Vessel "Lillian S" (sic)* and urged the court to down its tools for lack of jurisdiction.
18. Notably, in his Ruling that was delivered on 24th March 2023, in *Vihiga HCCC Misc No E003 of 2021 Uwowa Savings and Credit Cooperative Society Ltd vs Eric Alumasa Kagasa* (Suing as Legal Representative of the Estate of Collins Jumba (Deceased) Musyoka J rendered himself as follows:-

“The Applicant is entitled to its day in court. I note that the memorandum of appeal discloses reasonable and arguable grounds. I am persuaded that this is a proper case for grant of the orders sought. Consequently, I do hereby allow the application dated 18th January 2021, subject to half of the decretal amount being deposited in court within 30 days. Leave to appeal is for 30 days.”



19. Subsequently, the Appellant failed to comply with the aforesaid orders and filed a Notice of Motion application dated 2nd February 2024 and filed on 5th February 2024 seeking for extension of time to enable it comply with the said orders. This very court rendered itself in the said application as follows:-

“ 33. For the foregoing reasons, the upshot of this court’s decision was that the Applicant’s Application dated 2nd February 2024 and filed on 5th February 2024 was merited and the Prayer No (3) be and is hereby allowed in the following terms: -

1. That there shall be a stay of execution of Judgment that was delivered by Hon Ndombi (SRM) on 30th July 2021 in Vihiga PMCC No 74 of 2019 pending the hearing and determination of the appeal on condition the Applicant shall deposit half of the decretal amount in court within thirty (30) days from the date of this Ruling.
2. For the avoidance of doubt, in the event, the Applicant shall default on Paragraph 33(1) hereinabove, the conditional stay of execution shall automatically lapse.
3. The Applicant be and is hereby directed to file and serve his Memorandum of Appeal within fourteen (14) days from the date of this Ruling.
4. The Applicant be and is hereby directed to file a Record of Appeal within ninety (90) days from the date of this Ruling.
5. This matter will be mentioned on 11th February 2025 to confirm compliance and/or for further orders and/or directions.
6. In view of the fact that the Applicant has taken back the Respondent to re-litigate the application dated 18th January 2021, and thus suffer costs, it is hereby directed to pay the Respondent throw away costs in the sum of Kshs 10,000/= within thirty (30) days from the date of this Ruling failing which the Respondent will be at liberty to commence legal proceedings for the recovery of the same in the normal manner.

20. Despite having been given a second chance by this court, as at the time of filing the present application, the Appellant had failed to comply with the said order of 30th October 2025. It proceeded to file the application herein for a further extension of time claiming that there had been internal wrangles between its insurer and its shareholders which led to system failure and freezing of its financial accounts therefore the delay in the processing of payments of any court documents.

21. The Appellant annexed as evidence a Ruling dated 20th November 2024, in Nairobi HCCC No E328 of 2024 (Commercial and Tax Division) that indicated that the court therein had allowed an order constituting a temporary board which was to appoint the bank signatories. This court noted that the Appellant’s evidence was not conclusive as it did not indicate whether a final determination and/or Judgment to the said wrangles was obtained and way forward found.

22. Be that as it may, the conduct of the Appellant herein showed that it was not keen about prosecuting the instant application. On 30th September 2025, when this matter came up for mention, this very



court noted in its proceedings that the Appellant was absent and had not filed any Written Submissions despite the date having been taken by consent of parties. The interim orders issued on 18th March 2025 that had been subsequently extended on several occasions were set aside, vacated and/or discharged for lack of a prayer for extension on the part of the Appellant.

23. Going further, while the Appellant averred to have been keen to prosecute the appeal herein, it had not demonstrated any attempts to even obtain proceedings with a view of compiling a record of appeal. It had also not demonstrated any attempt to comply with the Ruling, even by paying the Respondent thrown away costs. While it continued to enjoy interim orders of stay for years, the Respondent continued to be denied his fruits of litigation.
24. Having said so, this court also noted that the Appellant ought to have filed this application in Vihiga HCCC Misc No E003 of 2021 Uwowa Savings and Credit Cooperative Society Ltd vs Eric Alumasa Kagasa (Suing as Legal Representative of the Estate of Collins Jumba (Deceased) which file had since been closed by this court for the reason that the conditional stay had lapsed due to non-compliance. Filing the same under the main appeal amounted to forum shopping as argued by the Respondent.
25. Notably, there is no stay of execution and the Respondent had not executed against it. It is clear that the Appellant has not proceeded diligently. This court was, thus, not persuaded that the Appellant had approached it with clean hands. It agreed with the Respondent's argument that it ought not to be seen to assist the indolent and that litigation must come to an end.

Disposition

26. For the foregoing reasons, the upshot of this court's decision was that the Appellant's Notice of Motion application dated 10th March 2025 and filed on 11th March 2025 was not merited and the same be and is hereby dismissed with costs to the Respondent.
27. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 26TH DAY OF JANUARY 2026

J. KAMAU

JUDGE

