

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

COMMERCIAL APPEAL NO. E260 OF 2024

GA INSURANCE LIMITED.....

APPELLANT

-VERSUS-

MEGANE LIMITED.....1ST

RESPONDENT

INSURANCE REGULATORY AUTHORITY.....2ND

RESPONDENT

JUDGMENT

1. This Judgement relates to the Appeal by the Appellant. This is in respect to the decision delivered by the Insurance Appeals Tribunal on 26th August, 2024. This is in respect to **Insurance Appeals Tribunal Case No. 3 of 2024 Megane Limited Vs Insurance Regulatory Authority and GA Insurance Ltd.**

Background Facts

2. The Appellant and the 2nd Respondent herein had filed a Notice of Preliminary Objection dated 15th February 2024 before the Insurance Appeals Tribunal. It was seeking an order to strike out the 1st Respondent's Memorandum of Appeal dated 31st January 2024. This was on the ground that the Appeal before the Tribunal was time barred under the provisions of **Section 173(1) of the Insurance Act** as read together with **Rule 7 (2) of the Insurance Appeals Tribunal Rules**. The Tribunal dismissed the Notice of Preliminary Objection.
3. Thereafter, the Appellant appealed and filed the Memorandum of Appeal dated 11th September 2024 to this Court. This was against the decision of the Insurance Appeals Tribunal, which was delivered on 26th August 2024. This was in **Insurance Appeals Tribunal Case No. 3 of 2024** between **Megane Limited -VS- Insurance Regulatory Authority & GA Insurance Limited** and raised the following grounds of appeal.

- a) *The learned Chairman and Members of the Tribunal misapprehended the provisions of Section 57 (c) of the Interpretation and General Provisions Act regarding what amounts to an excluded day.*
- b) *The learned Chairman and Members of the Tribunal failed to take cognizance of the fact that excluded days within the meaning of Interpretation and General Provisions Act are Sunday or a Public Holiday.*
- c) *The learned Chairman and Members of the Tribunal erred in law by adopting and applying the provisions of Order 50 rule 4 CPR 2010 in computing the time for lodging appeals as is required under Section 173(1) of the Insurance Act.*
- d) *The learned Chairman and Members of the Tribunal failed to take cognizance of the fact that Order 50 Rule 4 Civil Procedure Rules 2010 only applies to timeless (sic) set by a Judge, or procedural timelines set under the Civil Procedure Rules and the said rule does not apply in computing statutory timelines and in particular the timeline set in Section 173 (1) of the Insurance Act.*

- e) *The learned Chairman and Members of the Tribunal erred in law in making a blanket determination that the Civil Procedure Rules of 2010 binds the Tribunal without considering the provisions of Rule 5 (2) of the Insurance (Insurance Appeals Tribunal) Rules that give a limited application of the Civil Procedure Rules.*
- f) *The learned Chairman and Members of the Tribunal misapprehended the Appellant's preliminary objection and the applicable law and in so doing they arrived at an erroneous decision that is not supported by the applicable law.*
- g) *The learned Chairman and Members of the Tribunal erred in law and in fact in making a finding that the 1st Respondent Appeal had been filed in time and was properly before the Tribunal.*
4. The Appellant prayed for the following reliefs before the Tribunal;
- (i) *This appeal be allowed, and the ruling of the Insurance Appeal Tribunal dated 26th August 2024 be set aside*

and substituted with an order allowing the Appellants Preliminary Objection dated 15th February 2024.

(ii) The Appellant be awarded costs of this Appeal.

5. The Insurance Appeals Tribunal in its Ruling dated 26th August, 2024 held as follows;

“In view of the foregoing, the Tribunal finds that the decision of the Commissioner is dated 16th December, 2023 and therefore the time started running on 17th December, 2023 but stopped running on 20th December, 2023 and started running again on 14th January, 2024 making the Appeal lodged on 1st February, 2024 properly before this Tribunal having been filed within 23 days after the decision of the Commissioner.”

6. It is the dismissal of the Preliminary Objections by the **Insurance Regulatory Authority** date 11th March, 2024 and that of **GA Insurance Limited** dated 15th February, 2024, that have triggered this Appeal.

7. The Tribunal directed that the Appeal was properly before it and would be heard on merits.

Issues for determination

8. The Court has carefully considered the written submissions by the parties alongside the Record of Appeal, and there is only one issue for determination;

a) Whether the Insurance Appeals Tribunal erred in law in applying Order 50 Rule 4 of the Civil Procedure Rules in computing the statutory timelines for filing appeals that are lodged under Section 173(1) of the Insurance Act as read together with Section 204(3) of the said Act and Rule 7 (2) of the Insurance (Insurance Appeals Tribunal) Rules.

Analysis

9. It was the Appellant's case that the Tribunal misapprehended its Preliminary Objection and the Applicable law, resulting in an erroneous decision not supported by the applicable law. The Tribunal erred in law when it imported the application of Order 50 Rule 4 in computing time for

lodging the appeal that had been presented by the Respondent.

a) **Whether the Insurance Appeals Tribunal erred in law in applying Order 50 Rule 4 of the Civil Procedure Rules in computing the statutory timelines for filing appeals that are lodged under Section 173(1) of the Insurance Act as read together with Section 204(3) of the said Act and Rule 7 (2) of the Insurance (Insurance Appeals Tribunal) Rules.**

10. The 2nd Respondent reiterated that **Order 50 Rule 4 of the Civil Procedure Rules** does not apply to the Tribunal. That the Tribunal does not have a vacation like in the case of the High Court. That no gazette notice was produced to indicate that the Tribunal was on vacation.
11. **Section 204A (3) of the Insurance Act** provides that a party dissatisfied with the Commissioner's decision may lodge an appeal to the Insurance Appeals Tribunal within thirty days after receiving the decision.

“A party that is dissatisfied with the determination of the dispute by the Commissioner may within thirty days appeal the determination to the Tribunal.”

12. The 2nd Respondent issued a decision dated 30th November 2023, which the 1st Respondent contends to have received on 16th December 2023. The calculation of 30 days from 16th December 2023 would place the deadline of filing any appeal on 15th January 2024.
13. However, the Tribunal held that by dint of **Order 50 Rule 4 of the Civil Procedure Rules**, the 30-day window for appeal started running on 17/12/2023. However, it stopped running on 20/12/2023, until 14/01/2024, making the appeal lodged on 1st February 2024 properly before this Tribunal. The Appeal having been filed within 23 days after the decision of the Commissioner.
14. **Section 5 (2) of the Insurance (Insurance Appeals Tribunal) Rules** lists the powers of the Chairperson as follows;

(1) The Chairperson shall have the power to give directions for—

(a) furnishing of further particulars and supplementary statements;

(b) filing and exchange of documents;

(c) framing of issues; and

(d) other directions as are necessary to enable the parties to prepare for the hearing or to assist the Tribunal to determine any issue.

(2) The Chairperson, in matters before the Tribunal, shall have the same powers as vested in the Registrar of the High Court and shall exercise the power, mutatis mutandis, in accordance with the Civil Procedure Rules (sub. leg).

15. On the other hand, **Order 50 Rule 4 of the Civil Procedure Rules** provides that;

When time does not run;

Except where otherwise directed by a judge for reasons to be recorded in writing, the period

between the twenty-first day of December in any year and the thirteenth day of January in the year next following, both days included, shall be omitted from any computation of time (whether under these Rules or any order of the court) for the amending, delivering or filing of any pleading or the doing of any other act: Provided that this rule shall not apply to any application in respect of a temporary injunction.

16. It was the 2nd Respondent's argument that the above provision gives a Judge discretion to exclude the period between 21st December and 13th January of the following year from the computation of time for filing any pleadings. That this discretion is only reserved for a 'judge' and the said discretion does not extend to either a Magistrate, Chairperson of the Tribunal nor any other person other than the Judge. The 2nd Respondent further stated that **Section 2 of the Judicature Act** "Judge" means the Chief Justice, or any other judge appointed under Article 166 of the Constitution.

17. Contrary to the 2nd Respondent's assertions, it is the Court's understanding that the provision of **Order 50 Rule 4 of the Civil Procedure Rules** states that the mentioned excluded days are omitted from any computation of time unless otherwise directed by a Judge. In summary, in the absence of a judge's direction then those days are omitted from the computation of time. It follows then that as a matter of law and procedure, the dates between 21st December and 13th January will be deemed as excluded days in the computation of time.
18. To this regard, the Tribunal correctly expressed itself as to the Law.
19. The issue is whether, that law applied to the proceedings before the Tribunal.
- The Court has considered the decision in **Maersk Kenya Limited v Murabu Chaka Tsuma [2017] KECA 204 (KLR)** as cited by the Appellant. This decision was on the application of the Limitations of Actions Act. A Court could not purport to exclude the exempted period on every year a claim arose. It could also not purport

to rely on the provisions of the Civil Procedure to extend the life of a claim which had lapsed by operation of statute. Order 50 Rule 4 of the Civil Procedure Rules could not be used to revive a claim which had lapsed due to limitation of actions.

20. The Court of Appeal in **Boss Freight Terminal Limited v Commissioner of Domestic Taxes [2017] KECA 659 (KLR)** declined to allow **Order 50 Rule 4 of the Civil Procedure** Rules to be used to extend the time for filing an Appeal. The Court of Appeal stated as follows;

*“Dealing with the first ground, did the court below err in holding that **order 50 rule 4** did not apply to income tax appeals to the High Court? We have carefully combed through the Income Tax Rules and we have not come across any provision applying the said order and rule to income tax appeals to the High Court. Similarly, we note that **order 50 rule 4** is not among those orders and rules of the Civil Procedure, imported into the Income Tax Rules. The order and rule is therefore*

not applicable to income tax appeals as the learned judge correctly held.”

21. The Court of Appeal was of the view that a Preliminary Objection raised on the issue of an Appeal filed out of time is a jurisdictional issue.

*“The appellant having filed its appeal to the High Court out of time and in contravention of the applicable law, it cannot purport to invoke the provisions of **Articles 22 and 159** of the Constitution to validate an incompetent appeal. Nor can the appellant hike a lift on **section 1A and 1B** of the Civil Procedure Act on the court’s discretion to save such an appeal. The Supreme Court in the case of **Raila Odinga & 5 others v IEBC & 3 Others (2013) eKLR** reiterated that **Article 159(2) (d)** of the Constitution should not be invoked in a manner that ousts the provisions of other equally or more important provisions of the law. See also **Ramji Devji Vekaria v Joseph Oyula (2011) eKLR** and **David Ochieng v SDA Church (2012)***

eKLR. *These authorities, we emphasize, reiterate the principle that an appeal filed out of time and without leave of the court is not a mere technicality that can be saved by **Article 159** of the Constitution or the overriding objective.*

*As a parting shot we can only reiterate what we said in the case of **Patrick Kiruja Kithinji v. Victor Mugira Marete(2015) eKLR** on time as a jurisdictional issue.*

We observed thus:-

“.... In our view whether or not an appeal is filed on time goes to the jurisdiction of this Court. It is trite that this Court has jurisdiction to entertain appeals filed within requisite time and or appeals filed out of time with leave of the court. To hold otherwise would upset the established clear principles of institution of appeal in this Court.”

Given the foregoing, we have no hesitation whatsoever in holding that this appeal lacks merit and is accordingly dismissed with costs to the respondent.”

22. In **Principal Secretary/Accounting Officer Ministry of Defence & another v Public Procurement Administrative Review Board & another; Ministry of Gender, Culture, the Arts & Heritage (Interested Party) [2025] KECA 666 (KLR)** the Court of Appeal was of a similar finding.

“Does Order 50 Rule 4 change that? In Maersk Kenya Limited vs. Murabu Chaka Zuma [2017] eKLR, this Court considered the question whether a limitation period prescribed under the Limitation of Actions Act could be extended by dint of Order 50 Rule 4. In answering that question in the negative, the Court stated that Order 50 Rule 4 of the Civil Procedure Rules makes it clear that the rule applies specifically to computing time under the Civil Procedure Rules, or in accordance with an order of the Court. The Court cited the case of Republic vs. Public Procurement Administrative Review Board & Another ex parte Teachers Service Commission [2015] eKLR in which the High court cited the earlier case of Mokombo Ole Simel & Others vs. County Council of

Narok & Others Nairobi HCMA No. 361 of 1994. There, the High Court considered whether order 49 rule 5 of the repealed Civil Procedure Rules could enlarge time specified by section 9(2) and (3) of the Law Reform Act and stated that: "If the limited time is prescribed under the Civil Procedure Rules or by an order of the court or by summary notice, the court could enlarge the period....Order 49 rule 5 of the Civil Procedure Rules cannot be invoked to supersede the express provisions of the Act...Order 49 rule 3A is similarly a piece of delegated legislation and cannot have the effect of amending the express provisions of section 9(2) and (3) of the Act. The said provisions can only be altered or amended by an Act of the Parliament..."

25.The same applies equally to the matter at hand. Order 50 Rule 4 of the Civil Procedure Rules is not available to enlarge time limited by statute."

23. The Court takes note of the fact that the time and period of Thirty (30) days of filing the Appeal to the

Insurance Appeals Tribunal is set by the Act. It is not set by the Civil Procedure Rules or the Tribunal or the Court. Hence there is no power to exclude a period of time as provided for by **Order 50 Rule 4 of the Civil Procedure Rules. Section 57 of the Interpretation and General Provisions Act** does not offer the 1st Respondent any relief at all.

24. **Section 59 of the Interpretation and General Provisions Act** states as follows;

59. Construction of power to extend time

Where in a written law a time is prescribed for doing an act or taking a proceeding, and power is given to a court or other authority to extend that time, then, unless a contrary intention appears, the power may be exercised by the court or other authority although the application for extension is not made until after the expiration of the time prescribed.

25. To this Court the Tribunal would only exercise this power if the power to extend time was granted by the

enabling Act. In this case, there are no submissions that such power is donated to the Tribunal. In any event this is not an Appeal arising out of the exercise of the power under **Section 59 of the Interpretation and General Provisions Act.**

26. In light of the above, the Court is persuaded that the Appeal has merits.

27. As to costs, the same follow the event. The Court is persuaded that the Appellant as the successful party is deserving of the costs of this Appeal.

Determination

28. The Appellant's Appeal is allowed in the following terms;

(a) *This appeal be and is HEREBY allowed, and the Ruling of the Insurance Appeal Tribunal dated 26th August 2024 be and is HEREBY set aside and substituted with an order allowing the Appellant's Preliminary Objection dated 15th February 2024.*

(b) *The Appellant is awarded costs of this Appeal.*

29. It is so ordered.

30. This file is marked as closed.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 12TH
DAY OF FEBRUARY, 2026.**

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Mr. Kiplagat for the Appellant

Mr. Ashford Muriuki for the 1st Respondent

Mr. Mweke for the 2nd Respondent

Mr. Peter Wabwire - Court Assistant