



**Kenya Orient Insurance Co. Ltd v Munyao & another (Suing as the Administrators
of the Estate of the Late Munyao Kalutu) (Miscellaneous Application
E021 of 2025) [2026] KEHC 1847 (KLR) (Civ) (20 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1847 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS APPLICATION E021 OF 2025
AC MRIMA, J
FEBRUARY 20, 2026**

BETWEEN

KENYA ORIENT INSURANCE CO. LTD APPLICANT

AND

JANE MWENDE MUNYAO 1ST RESPONDENT

WAMBUA KALUTU 2ND RESPONDENT

**SUING AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE
MUNYAO KALUTU**

RULING

Background:

1. The dispute before this Court originates from Milimani Chief Magistrates Court Civil Suit No. E2673 of 2023 (hereinafter referred to as ‘the suit’). In the suit, Jane Mwendu Munyao & Wambua Kalutu, the Respondents herein, filed a Notice of Motion dated 2nd November 2023. They sought to strike out Kenya Orient Insurance Co. Ltd, the Appellant herein, Statement of Defence and that judgment be entered as prayed in the Plaintiff.
2. The outcome of that application is now the subject of intense procedural controversy before this Court with parties confronted with the existence of two different rulings on the same application. The rulings are an incomplete, unsigned one-page version dated 15th October 2024 published on the Case Tracking System (CTS) and a more detailed, signed three-page version dated 30th October 2024 found in the physical Court file.



3. The Appellant, aggrieved by the initial ruling and subsequent execution proceedings, moved this Court for leave to appeal out of time, hence, the instant application.

The Application:

4. Through a Notice of Motion dated 7th May 2025, supported by the Affidavit of Jemima Njagi deposed to on the same date, the Applicant sought Orders as follows: -
 1. Spent
 2. That this Honourable court be pleased to extend time and grant leave to the applicant to file a memorandum of appeal out of time against the ruling delivered by Honourable K.D Ole Keiwua in Milimani Commercial Court Case No. E2673 of 2023 on 15th October 2024.
 3. That upon grant of leave to appeal out of time, the Memorandum of Appeal shall be deemed as duly filed.
 4. That A temporary order is hereby issued staying the decree issued on the 18th October 2024 pending hearing and determination of this application.
 5. That A temporary order is hereby issued staying the garnishee proceedings and the garnishee nisi order dated the 24th April 2025 pending hearing and determination of this application.
 6. That the application be heard inter parties on such dates and time as this Honourable Court may direct.
 7. That cost of this application be borne by the outcome of the appeal.
 8. That this Honourable Court be pleased to issue any other order and/or direction it deems fit to grant in the circumstances.
5. In the supporting Affidavit, it was deposed that the trial Court initially scheduled the ruling for 18th October 2024. On that day, the Court informed parties that the ruling was not ready and deferred the matter to 30th October 2024. However, the Court file was later reported missing, and parties were told to wait for a notice. It is the Applicant's case that it only discovered that a ruling had been delivered on 15th October 2024, before the scheduled date, after being served with garnishee orders in April 2025.
6. The deponent contended that the 15th October 2024 ruling was a mere two-paragraph summary that lacked legal analysis and failed to clearly state in whose favour the contest was decided.

The Submissions:

7. In its submissions dated 4th August 2025, the Applicant argued that the delay in filing the appeal was wholly attributable to the trial Court's procedural irregularities. It highlighted that the Court failed to notify parties of the delivery date as required by Order 21 Rule 1 of the Civil Procedure Rules and misinformed them during the 18th October 2024 appearance. It was its main argument that the discovery of two conflicting rulings caused genuine confusion and that the 15th October 2024 ruling, upon which the current decree and execution are based, was inoperative due to the existence of the later 30th October 2024 version.
8. As regards arguability of the intended appeal, the Applicant submitted that its case is arguable as the trial Court summarily struck out a defence via a cursory two-paragraph ruling without addressing the points of opposition or the statutory cap of Kshs 3,000,000 under Section 5 of Cap 405 Laws of Kenya. To that end, it relied on various authorities, among them the one in *Thuita Mwangi -vs- Kenya Airways*



Ltd [2003] eKLR, DT Dobie & Company (Kenya) Ltd -vs- Muchina [1982] KLR 1 and the one in Independent Electoral and Boundaries Commission & another -vs- Stephen Mutinda Mule & 3 others [2014] eKLR.

The Respondents' case:

9. The Respondents, through the Replying Affidavit of Musili Mbiti deposed to on 16th May 2025, described the application as an abuse of Court process and a calculated move to frustrate the execution of a lawful decree. They asserted that the ruling was delivered via the CTS on 18th October 2024, though dated 15th October 2024. They also argued that there had been an inordinate and unaccounted for delay of seven months since that delivery.
10. It was further claimed that the Appellant was merely attacking the form of the ruling rather than its substance and that it had failed to provide a satisfactory explanation for the delay.

The Submissions

11. The Respondents urged their case further through written submissions dated 26th June 2024 (sic). They argued that the 15th October 2024 ruling was simply a truncated version of the 30th October 2024 ruling, uploaded by mistake and without a signature. They contended that the application for leave to appeal the 15th October 2024 ruling was overtaken by events because a complete, signed, and dated ruling 30th October 2024 existed in the Court file.
12. It was their case that granting leave would be an exercise in futility as the intended appeal is based on a wrong/incomplete ruling that lacks the trial Court's actual reasoning. They emphasized that the signed 30th October 2024 version is the official Ruling.

Analysis:

13. Having carefully traced the origin of the dispute, the parties' submissions and the decisions referred to, the issues that emerge for determination are as follows: -
 - i. The legal status and effect of having two differing rulings (dated 15th and 30th October 2024) in the same matter.
 - ii. Whether the Applicant has demonstrated good and sufficient cause for the delay in filing the appeal.
 - iii. Whether the intended appeal is arguable.
 - iv. Whether the Respondents will suffer prejudice if the extension of time is granted.
14. The Court will now have a look at the above issues.

The effect of two differing rulings:

15. The alleged existence of two varying rulings, a truncated, unsigned version dated 15th October 2024 and a signed, detailed version dated 30th October 2024, without any reasonable cause, can be a glaring irregularity that touches on the integrity of the judicial process. However, that is the issue sought to be resolved in the intended appeal.
16. Resolving conflicting decisions is necessary to uphold the rule of law. The administration of justice requires certainty. Therefore, the matter at hand calls for a further look into the circumstances leading to the status quo and the quest to lodge an appeal thereof may not be an idle one.



Whether the Applicant has demonstrated good and sufficient cause for the delay in filing the appeal:

17. The jurisdiction of this Court to enlarge time for filing an appeal is derived from Section 79G of the *Civil Procedure Act* which provides 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.
18. This discretion, while unfettered, must be exercised judicially and not arbitrarily. The guiding principles as was discussed by the Court of Appeal in the case of *Thuita Mwangi -vs- Kenya Airways Ltd [2003] eKLR*, include; the period of delay; the reason for the delay; the arguability of the appeal and the degree of prejudice to the Respondent if the extension is granted; the importance of compliance with time limits to the particular litigation; and the effect of granting the extension to the administration of justice.
19. In the present case, the delay is approximately seven months. Ordinarily, such a delay would be considered inordinate. However, delay is not an absolute bar if the explanation offered is plausible. In *Leo Sila Mutiso -vs- Rose Hellen Wangari Mwangi [1999] eKLR*, the Court stated as follows: -

.... It is now settled that the decision whether or not to extend the time for appealing is essentially judicial. 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.
20. The Applicant attributed the delay to a profound systemic failure at the trial Court. The record before this Court, specifically the transcription of proceedings, confirms that on 18th October 2024, the trial Court expressly informed the parties that the ruling was not ready and deferred the matter to 30th October 2024. However, the Case Tracking System (CTS) indicates a ruling was delivered on 15th October 2024, a date on which the parties were not present and for which no notice was issued.
21. Order 21 Rule 1 of the Civil Procedure Rules mandates that a decision be pronounced in open Court, either at once or on a future day of which due notice shall be given to the parties or their Advocates. This issue, therefore, ought to be looked into in a more detailed manner and that can be in the appeal.
22. Having said so and in view of the Supreme Court's decision in *Nicholas Kiptoo Arap Korir Salat -vs- Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR* which emphasized that while timelines are generally strict, they are not absolute bars to justice where a litigant has a plausible excuse for delay, such as factors beyond their control, this Court is satisfied that the delay in this matter is excusable. However, given the period in issue, the Applicant shall shoulder the costs of the application in the event the application is successful.

Whether the intended appeal is arguable:

23. An arguable appeal is not necessarily one that must succeed, but one that is not frivolous. The Applicant intends to challenge the summary striking out of its defence. In *DT Dobie & Company (Kenya) Ltd vs. Muchina [1982] KLR 1*, a decision relied upon by the Applicant, Madan J.A. held that: -

.... The power to strike out is a draconian power... It should be exercised with extreme caution and only in the clearest of cases.



24. The Applicant raised a substantial point of law regarding the statutory liability cap under Section 5 of the Insurance (Motor Vehicle Third Party Risks) Act (Cap 405). The question of whether a Court can enter judgment against an insurer beyond the alleged statutory limit is a weighty triable issue. This Court is, hence, satisfied that the intended appeal is not frivolous but rather raises substantial issues for further consideration by this Court.

Whether the Respondents will suffer prejudice:

25. This Court is alive to the fact that the Respondents have a decree in their favour. However, the prejudice of being denied the fruits of judgment must be weighed against the injustice of denying a party their constitutional right of appeal allegedly due to errors on the part of the Court.

26. A Court can balance these competing interests by say, imposing conditions for the stay of execution as provided under Order 42 Rule 6(2) of the Civil Procedure Rules. By ordering the deposit of the sum of Kshs 3,000,000/= [the alleged statutory limit] into Court, on one hand, then the Respondents' interest is secured should the appeal fail, on the other hand, the Applicant is granted the opportunity to ventilate its grievances. With such a balance, the Respondents stands not to suffer any prejudice during the hearing of the appeal.

Disposition:

27. From the foregoing discourse, this Court finds that the Notice of Motion dated 7th May 2025 is meritorious and the following final orders hereby issue: -

- (a) Leave is hereby granted to the Applicant to file and serve the Memorandum of Appeal out of time against the ruling in Milimani CMCC No. E2673 of 2023 and in a substantive appeal file. That will be in the next 10 days of this order.
- (b) An order of stay of execution of the decree and any emanating garnishee proceedings in Milimani CMCC No. E2673 of 2023 is hereby granted pending the hearing and determination of the appeal, on condition that the Applicant deposits the sum of Kshs. 3,000,000/= [Three Million Only] in Court within thirty (30) days of this order. The deposit shall be in the main appeal file.
- (c) In the event of default in [a] and/or [b] above, the Notice of Motion dated 7th May 2025 shall stand dismissed with costs assessed at Kshs. 20,000/= [Twenty Thousand Only] and the stay orders shall automatically stand discharged with liberty to the Respondents to levy execution.
- (e) The Applicant shall pay the costs of the application assessed at Kshs. 20,000/= [Twenty Thousand Only] within 30 days hereof and in default execution to issue.
- (f) This matter is hereby marked as CLOSED.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF FEBRUARY, 2026.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Miss Nyabonje, Learned Counsel for the Applicant.

No appearance for the Respondents.



Michael/Amina – Court Assistants.

