



REPUBLIC OF KENYA



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Mercantile Insurance Company Limited v Summit Travel Services Limited & 5 others (Civil Case 511 of 2008) [2026] KEHC 2683 (KLR) (Commercial and Tax) (27 February 2026) (Ruling)

Neutral citation: [2026] KEHC 2683 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 511 OF 2008
MN MWANGI, J
FEBRUARY 27, 2026

BETWEEN

MERCANTILE INSURANCE COMPANY LIMITED DECREE HOLDER

AND

SUMMIT TRAVEL SERVICES LIMITED 1ST JUDGMENT DEBTOR

TANYA RANGUMA 2ND JUDGMENT DEBTOR

OLIVIA RANGUMA 3RD JUDGMENT DEBTOR

JACK RANGUMA 4TH JUDGMENT DEBTOR

DR ONDIEK OKELLO 5TH JUDGMENT DEBTOR

AND

ABSA BANK KENYA PLC GARNISHEE

RULING

1. The 3rd Judgment debtor/applicant filed a Notice of Motion application dated 19th March 2024 brought under the provisions of Sections 1A, 1B and 75 of the *Civil Procedure Act*, Order 43 Rules 2 & 3, Order 50 Rule 6 and Order 51 of the Civil Procedure Rules, 2010. The applicant seeks the following orders –
 - i. Spent;
 - ii. That this Honourable Court do allow the applicant/judgment debtor to apply for leave to appeal to the Court of Appeal out of time and/or extend the time to make the said application;



- iii. That this Honourable Court do grant the applicant/Judgment debtor leave to appeal to the Court of Appeal against the Ruling and Orders of the High Court, Commercial & Tax Division at Nairobi (Njoki Mwangi, J.) delivered on 22nd September 2023; and
 - iv. That costs incidental to this application be in the cause.
2. The application is premised on the grounds in support of the Motion and the supporting affidavit of Mr. Jackton Ranguma, a Director of the 1st judgment debtor. He averred to being aware that the decree holder/respondent applied vide an *ex parte* Chamber Summons dated 5th July 2023, *inter alia*, for an order of Garnishee Nisi to preserve and eventually offset the amount of Kshs.10,414,149.14 and USD 48,881.10 from the funds in bank account No.0361xxxxxx held by him with the respondent herein, the Garnishee Bank.
 3. He deposed that he was not just aggrieved but also perplexed since according to the decree of the Court of 29th March 2012, the principal decretal sum was Kshs.4,779,329.70 and USD 48,810.10, at an exchange rate of approximately Kshs.85 per US Dollar in the year 2012, which brought the decretal sum to Kshs.8,961,504.00.
 4. He further deposed that he had made several payments afterwards and by a Ruling of the Court of 14th February 2022, it was stated that “it was not denied that the sum of Kshs.9,617,000/= had been paid to settle the principal amount due”. He stated that he had made further payments of Kshs.1,100,000/= to settle interest which excludes a cheque of Kshs.600,000/= made out to the decree holder, which could not clear due to the Orders of the Court of 10th July 2023, essentially freezing his account.
 5. He averred that he was flummoxed by the possibility of a decreed amount of Kshs.8,961,504.00 plus interest, of which he had paid a verifiable and acknowledged amount of Kshs.10,817,000/=, now leading to the decree holder seeking Garnishee Nisi orders for the purported outstanding sum of Kshs.10,414,149.14 & USD 48,881.10.
 6. Mr. Ranguma stated that he was aware that on or around 31st July 2023, the Court directed that a Ruling on the application of 5th July 2023 would be issued on 22nd September 2023. He further stated that unfortunately, when Counsel on record for the judgment debtor transmitted the said information to his Office Clerk and to a colleague who was to hold his brief and take the Ruling, the matter was inadvertently marked as coming up for Ruling on 22nd October 2023. He averred that due to the grievous substitution of a single word, when the matter came up for Ruling, his Advocate’s office administrative system marked the matter as pending for Ruling for another month or so.
 7. He deposed that on or around 20th October 2023, his Advocates on record realized their error and immediately perused the file, securing a copy of the Ruling and an Order of 9th October 2023.
 8. He stated that he knows that the said Order was executed despite his firm belief that he only owes Kshs.1,200,000/= payable pursuant to a scheme of payment with the decree holder, and claimed to have lost in one fell swoop Kshs.7,896,639.20.
 9. Mr. Ranguma averred that vide an application dated 1st November 2023, he filed an application to the Court of Appeal seeking *inter alia*, for the Court to grant leave and extend time for the filing of an appeal against the Ruling and the Orders of this Court of 22nd September 2023, which was allowed by Hon. Justice M. Gachoka.
 10. He stated that as per Order 43(3) of the Civil Procedure Rules, applications for leave to appeal under Section 75 of the Act shall in the first instance be made to the Court making the Order sought to be appealed from, either orally at the time the Order is made, or within fourteen (14) days from the date



of such order. He indicated that the appeal against the Orders of this Court of 22nd September 2023 do not lie as of right.

11. He expressed being desirous and eager to lodge an appeal, being wholly aggrieved by the Ruling of 22nd September 2023, but through no fault of his own, he had fallen afoul of Section 75 of the Civil Procedure Act and Order 43(3) of the Civil Procedure Rules, 2010, and seeks the redress of this Court for time to be extended to seek leave to appeal and for the said leave to be granted.
12. He asserted that he believes he has an arguable and meritorious appeal and wishes to have it canvassed before the Court of Appeal. The applicant listed down the grounds of the intended appeal in his affidavit.
13. He deposed that the oversight by his Advocates on record should not defeat his right to argue what he believes is a meaningful appeal deserving of determination before the Court of Appeal.
14. He stated that the instant application had been filed without inordinate delay as it had been filed within 3 days of the Court of Appeal's Ruling. He concluded by stating that until the decision of the Court of Appeal of 15th March 2024, any application for leave to appeal would have been moot.
15. In opposing the instant application, the respondent through Ms Sarah Weru, its Company Secretary, swore an affidavit on 31st May 2024. She stated that the application herein shows that there is no bona fide dispute as to the debt owing that would warrant this Court's discretionary powers being invoked to grant leave to appeal or to extend time for the application to be made.
16. She deposed that it is clear from the application that the applicant does not dispute that interest has been accruing on the principal amount since the decree of 12th March 2012, and that there exists a Ruling of the Court delivered on 14th February 2022 that has neither been set aside or varied, which held that interest was awarded by Court, which remains unpaid and continues to increase. She stated that from the application before Court, there has been no payment or attempt to pay interest.
17. She averred that it was on the said basis that on 22nd September 2023, this Court held in allowing the respondent's garnishee application, that the outstanding decretal amount payable to the respondent stood at Kshs.10,414,149.14 and USD 48,8881.10, respectively, as at September 2021.
18. She further averred that the garnishee application was preceded by letters dated 14th November 2022 and 23rd November 2022, through which the applicant committed to a payment plan to settle the decretal amount, but then failed to honour the same. She stated that the amount agreed on was more than Kshs.1,200,000.
19. Ms Weru deposed that the respondent sought expert advice on the issue via an Expert Report dated 2nd May 2024, wherein Accounting Africa LLP confirmed the outstanding interest due and payable to the respondent as at 30th April 2024 was Kshs.7,423,895.50. She claimed that inasmuch as the Court of Appeal granted the applicant extension of time to file its Notice of Appeal, there is nothing to be appealed to, at the Court of Appeal.
20. Ms Weru stated that grant of leave being discretionary, the applicant ought to have demonstrated that in the exercise of its discretion, the Court misdirected itself when issuing the Garnishee Order Absolute. She stated that in light of the clear findings of the Expert Report and admissions of the applicant himself, it is clear that the Court did not err in issuing the Garnishee Order Absolute.
21. She contended that the applicant has no reasonable prospect of appeal or even an arguable appeal. She stated that the respondent has been pursuing the full settlement of the decretal amount for over 12 years and it was time for litigation to be put to an end, and for it to be allowed to enjoy the fruits of



a decision made in its favour, especially in light of the fact that the Ruling dated and delivered on 27th January 2012 that determined the main suit, has not been appealed against.

22. In urging this Court not to grant extension of time for the filing of a Notice of Appeal, she stated that extension of time is not the right of a party but an equitable remedy that is only available to a deserving party at the discretion of the Court. She asserted that the applicant bears the burden to demonstrate to the satisfaction of the Court that the delay in taking the requisite steps was occasioned by a reasonable cause.
23. She contended that the applicant had failed to lay any satisfactory basis upon which the discretion of the Court ought to be exercised. She stated that despite the applicant's allegation that its sole justification for not filing the Notice of Appeal and application out of time was that the Advocate on record made a mistake as to the date on which the Ruling was to be delivered, the applicant's bank account was debited pursuant to the Court Order on 12th October 2023, and funds transferred to the respondent's Advocate's bank account.
24. She claimed that while seeking to place blame on his Advocates, the applicant had been indolent and careless. She stated that it cannot be that a substantial amount of money was moved out of the deponent's bank account and he was not aware of the same, and that it took him and his Advocates more than 2 weeks after the said transaction to even realize that a Ruling had been delivered, and it took the Advocate another week to file a Notice of Appeal out of time, and without leave of the High Court.
25. She stated that Courts have on several occasions held that it is incumbent on parties to be diligent and follow up on the outcomes of their cases even when they are represented by Counsel. She urged this Court not to condone the applicant's indolence by granting him leave to appeal out of time or extension of time to file and make the application to appeal out of time.
26. The applicant filed a further affidavit sworn on 9th July 2025 by Mr. Jackton Ranguma, wherein he mostly reiterated the contents of his supporting affidavit. He attached a Report by Kevin Isika, CPA, which he stated disclosed fundamental flaws in the Report of 2nd May 2024 by KKCo East Africa LLP, which was relied on by the respondent herein. He contended that misapplication of legal and accounting principles have led to inordinate, arguably fraudulent computation of interest and outstanding debt by the respondent.
27. In turn, the respondent filed a supplementary replying affidavit sworn by Ms Elizabeth Matimu, a certified Public Accountant Practising with the firm of KKCo East Africa LLP, sworn on 6th August 2025.
28. She affirmed that she prepared the Expert Report dated 2nd May 2024, confirming that the outstanding interest due and payable to the respondent as at 30th April 2024 was Kshs.7,423,895.50, as per the Report attached to her affidavit. She disagreed with the contents of the Report prepared by Foresight Financial Solutions (FFS), on behalf of the applicant.
29. The instant application proceeded by way of written submissions. The applicant's written submissions dated 9th July 2025, were filed by Wasuna & Company Advocates. The respondent on the other hand filed its written submissions dated 6th August 2025, through the law firm of ADRA Advocates LLP.
30. Mr. Odhiambo, learned Counsel the applicant reiterated the contents of applicant's affidavits. He relied on the provisions of Order 50 Rule 6 of the Civil Procedure Rules, 2010, on the Court's power to enlarge time. He also relied on the case of Ibrahim & another v Muhsin & another (Civil application E058 of 2024) [2024] KECA 862 (KLR), wherein an application for extension of time due



to inadvertence on the part of Counsel was allowed. He also cited the case of *Auma v South Nyanza Sugar Co. Ltd* (Civil Appeal E061 of 2024) [2024] KEHC 5832 (KLR), on the same issue.

31. Counsel stated that the subject Ruling of this Court was rendered on 22nd September 2023, and that on 1st November 2023, the applicant filed an application to the Court of Appeal, which was filed 1 month and 10 days from the date of this Court's Ruling. He stated that the application for leave to file a Notice of Appeal out of time was allowed by Hon. Justice M. Gachoka.
32. Counsel admitted that although he made a serious mistake, he had acted swiftly, lawfully and methodically to remedy the said mistake. He stated that the delay is not inordinate, while taking into account the circumstances of this case.
33. He relied on the case of *Paul Wanjohi Mathenge v Duncan Gichane Mathenge* [2013] KECA 199 (KLR), in which the late Otieno – Odek JA., extended time for the filing of a Notice of Appeal in an application made 1 year and 9 months after the decision sought to be appealed from was made.
34. Counsel contended that the applicant's grounds of appeal in the draft Memorandum of Appeal establish a threshold of arguability, and no prejudice had been shown that was likely to be suffered by the respondent.
35. Mr. Odhiambo submitted that the provisions of Order 43 Rule 1(3) of the Civil Procedure Rules, 2010, state that applications for leave to appeal under Section 75 of the Act shall be made within 14 days from the date of the decision to be appealed from. He submitted that the applicant believes that the criteria for being granted such leave is on whether he has an arguable appeal and not one that is frivolous. He cited the case of *Turungi v Alfa Motors Limited* [2024] KEHC 910 (KLR), to support his assertion. He prayed for the application to be allowed as prayed.
36. In its written submissions, just like the applicant, the respondent largely reiterated the averments made in its affidavits. Ms Rutvi Shah, learned Counsel for the respondent relied on the case of *J. P. Machira t/a Machira & Company Advocates v Wangethi Mwangi & another* [2002] KECA 305 (KLR), to show that whether to grant leave or not is a matter of the Court's discretion, which has to be judicially considered.
37. Counsel also relied on the cases of *Kurgat Marindany v Director of Public Prosecutions & 3 others* [2017] KEHC 8985 (KLR) and *Joseph Awino v Advocates Disciplinary Tribunal & another* [2019] KEHC 2130 (KLR), to support the argument that the Ruling of 14th February 2022 still stands, and the applicant herein is estopped from disputing his liability in view of his failure to appeal against the said Ruling. She urged this Court not to exercise its discretion in favour of the applicant.
38. In asserting that the applicant has no prospects of appeal, Counsel relied on the Court of Appeal decision in *Kenya Shell Limited v Kobil Petroleum Limited* [2006] KECA 389 (KLR) and the High Court decision in *Mwangi Keng'ara & Co. Advocates v Upward Scale Investment Co. Ltd & 2 others* [2020] KEHC 8188 KLR.
39. Ms Shah submitted that since extension of time is an equitable remedy that is only available to a deserving party at the discretion of the Court, the applicant bore the burden to demonstrate to the satisfaction of the Court that the delay in taking the requisite steps was occasioned by a reasonable cause. She cited the Supreme Court decision in *County Executive of Kisumu v County Government of Kisumu & 8 others* [2017] KESC 16 (KLR), to support her submission in that regard.
40. Counsel contended that it cannot be that a substantial amount of money moved out of the applicant's bank account and the applicant was not aware of the same. She stated that it took the applicant and his Advocate more than two (2) weeks after the said transaction to realize that a Ruling had been delivered,



and it took the applicant another week to file a Notice of Appeal out of time and without leave of the High Court.

41. She contended that the applicant while seeking to place blame on his Advocates, has also been indolent and careless. Ms Shah submitted that Courts have on several occasions held that it is incumbent on parties to be diligent and follow-up on the outcomes of their cases even where they are represented. She relied on the Court of Appeal decision in *Church of God East Africa & another v Dinah Buluma* [2019] KECA 330 (KLR) and the High Court's decision of *Joseph Odide Walome v David Mbadi Akello* [2022] KEHC 2748 (KLR), to reinforce her position.
42. Counsel stated that the respondent has been pursuing the full settlement of the decretal amount for twelve (12) years and that this Court should not condone the applicant's indolence by granting leave to appeal out of time or extension of time to file an appeal out of time.

ANALYSIS AND DETERMINATION.

43. I have considered the instant application, the affidavits filed by the applicant and the ones filed by the respondent, as well as the written submissions by their respective Counsel. The issues for determination are-
 - i. If I have the jurisdiction to determine the instant application in light of the Court of Appeal (single Judge) Ruling of 15th March 2024; and
 - ii. If the answer to (i) above is in the affirmative, if I should grant leave to the applicant to file his Notice of Appeal out of time.

If I have the jurisdiction to determine the instant application in light of the Court of Appeal (single Judge) Ruling of 15th March 2024.

44. The applicant contends that the Advocate who held brief for his Advocates when the date for delivery of the Ruling was given indicated that the Ruling would be delivered on 22nd October 2023 instead of the scheduled date of 22nd September 2023. The applicant states that since the Ruling was delivered in the absence of his Counsel, he was not aware of the same until 20th October 2022.
45. He further contends that he was not aware that any money was debited from his bank account after the decree holder was granted a Garnishee Order Absolute. Whereas it might be true that the applicant's Advocate mis-diarized the date for delivery of the Ruling, it is however not lost to this Court that once a Ruling or Judgment, as the case may be, is uploaded by the Court on the CTS, Advocates representing parties do receive alerts notifying them that a Ruling or Judgment has been uploaded.
46. This Court's jurisdiction to grant the Orders being sought by the applicant herein is derived from the provisions of Order 43 Rule 1(3) of the Civil Procedure Rules, 2010, which provides as follows –

An application for leave to appeal under section 75 of the Act shall in the first instance be made to the court making the order sought to be appealed from, either orally at the time when the order is made, or within fourteen days from the date of such order.
47. The above provisions are framed in mandatory terms, hence failure to comply with the provisions of Order 43 Rule 1(3) of the Civil Procedure Rules, 2010, is ground enough for the Court to decline to exercise its discretion in favour of an applicant. Further, this Court is cognizant of the provisions of Rule 41(1) of the Court of Appeal Rules, which state that –
 1. In a civil matter -



- a. where an appeal lies with the leave of the superior court, application for such leave may be made –
 - i. informally at the time when the decision against which it is desired to appeal is given; or
 - ii. by motion or chamber summons according to the practice of the superior court, within fourteen days of such decision;
- b. where an appeal lies with the leave of the Court, application for such leave shall be made -
 - i. in the manner laid down in rules 44 and 45 within fourteen days after the decision against which it is desired to appeal; or
 - ii. where application for leave to appeal has been made to the superior court and refused, within fourteen days after such refusal.

48. From the averments made by the applicant herein, he in the first instance made an application to the Court of Appeal for extension of time to file a Notice of Appeal. As was admitted by the applicant, he filed the said application before the said Court vide Civil Application No. Nai E514 of 2023. Hon. M. Gachoka JA, allowed the application on 15th March 2024 and directed that the Notice of Appeal should be filed within 7 days and thereafter, the appeal to be filed within 45 days. From the annexures exhibited by the applicant, I did not see any Ruling from the said Court setting aside the said Orders.
49. As it is, the Orders of Hon. M. Gachoka J.A., subsist to date. In the hierarchy of Courts, the decisions of the Court of Appeal are binding to this Court. That being the case, the applicant's Advocates should have figured out how to go about undoing the error of their own making, after they filed the application for leave to file a Notice to Appeal out of time in the wrong Court.
50. I however note with a lot of concern that none of the Advocates representing the parties herein addressed the issue of whether this Court has the jurisdiction to determine the instant application on merits or not, after the Court of Appeal had been moved with a similar application and Orders were issued in the applicant's favour. The respondent should have considered filing a Notice of Preliminary Objection for determination of the issue of this Court's jurisdiction in determining the instant application.
51. Be that as it may, having taken into account the existence of the Court of Appeal's Ruling of 15th March 2024, I hold that I have no jurisdiction to determine the instant application on its merits. In so holding, I am bound by the Court of Appeal's decision in the case of the Owners of the Motor Vessel "Lilian S' v Caltex Oil Company (Kenya) Ltd (Civil Appeal No. 50 of 1989) [1989] KECA 48 (KLR) 17 November Judgement, that without jurisdiction, a Court of law should down its tools.
52. In the result, the instant application is hereby struck out with costs to the respondent.
- It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 27TH DAY OF FEBRUARY 2026.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-



Mr. Odhiambo for the 4th judgment debtor/applicant

Ms Rutvi Shah for the decree holder/respondent

Ms Wokabi – Court Assistant.

