



REPUBLIC OF KENYA



**Riunge v Insight Communications Limited & 2 others (Civil Appeal
(Application) E860 of 2023) [2025] KECA 211 (KLR) (7 February 2025) (Ruling)**

Neutral citation: [2025] KECA 211 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E860 OF 2023
DK MUSINGA, F SICHALE & FA OCHIENG, JJA
FEBRUARY 7, 2025**

BETWEEN

DAVID MUNIU RIUNGE APPLICANT

AND

INSIGHT COMMUNICATIONS LIMITED 1ST RESPONDENT

ERNEST MUINDE KIOKO 2ND RESPONDENT

EDWARD NJENGA MUCHAI, ADVOCATE 3RD RESPONDENT

(Being an application for stay of execution of the ex-parte judgment dated 24th January 2020 pending the determination of the appeal from the Ruling of the High court of Kenya at Nairobi (F. Tuiyott, J.) dated 8th March 2021 in High Court Comm. No. 472 of 2012)

RULING

1. The applicant's notice of motion dated October 24, 2024 seeks stay of execution of the *ex parte* judgment and/or orders of the High Court dated 24th January 2020 in Nairobi High Court Comm. No. 472 of 2012 pending hearing and determination of the appeal.
2. In the affidavit in support of the application, the applicant states that sometime in November 2009, the 1st respondent requested him to inject some capital into his struggling medical clinic business which he was operating in the name and style of Valley Arcade Medical Centre, with a promise to share profits once the business picked up; the applicant agreed and injected more than Kshs.5 million, but the business still did not improve; that subsequently he entered into negotiations with the 1st respondent for sale of the clinic to him, the 3rd respondent being their common advocate, but the negotiations broke down; that the 1st respondent was to refund the applicant the amount that he had invested in the clinic but that was not to be. Instead, the 1st respondent filed a suit against the applicant and the 3rd



- respondent alleging the applicant had defaulted in the payment of Kshs.8,300,000 allegedly towards the purchase of the said business.
3. The applicant instructed the 3rd respondent to act for him in the said matter, but apparently the advocates did not do so, he learnt that another firm of advocates, Messrs. Kimani Kahiro Associates, had filed a notice of change of advocates on his behalf on 27th August 2012.
 4. The applicant stated that he had never given any instructions to Messrs. Kimani Kahiro & Associates, who did not notify him of the hearing date or attend court when the matter came up for hearing, leading to entry of an *ex parte* judgment against him in the sum of Kshs.8,300,000.
 5. The applicant applied to set aside the *ex parte* judgment, but the trial judge ordered that he deposits the decretal amount in court as security, a condition which was quite onerous on his part.
 6. Being aggrieved by the said decision, the applicant filed a notice of appeal, on which he bases this application.
 7. Meanwhile, the 1st respondent has commenced execution proceedings, and on 22nd October 2024 the Deputy Registrar of the High Court issued warrants of arrest against the applicant for his failure to satisfy the decree.
 8. The applicant contends that he has an arguable appeal, and has annexed to his application a copy of the memorandum of appeal. He further states that unless the orders sought are granted, he will be arrested and committed to civil jail, thus jeopardizing his freedom. For those reasons, the applicant urges this Court to grant the orders as sought.
 9. The application came up for hearing on 18th December 2024. Mr. Makokha appeared for the applicant, while Mr. Munikah was for the 1st and 2nd respondents. The applicant's advocate relied on his submissions dated 21st November 2024, which he briefly highlighted. The respondents had not filed any submissions but their advocate made brief oral submissions. Mr. Munikah submitted that the appeal herein is not arguable; that the applicant had failed to comply with the condition that was imposed by the trial court and therefore the execution rightly proceeded. He urged us to dismiss the application.
 10. We have considered the application, and the submissions made before us. The principles that guide this Court in an application of this nature are now well settled. An applicant has to demonstrate that the appeal or intended appeal is arguable; and that unless the Court grants the orders sought, the appeal, if successful, shall be rendered nugatory. See [Chris Munga N. Bichage vs Richard Nyagaka Tong'i & 2 Others](#) [2013] eKLR. An arguable appeal is not one that will necessarily succeed, it is one that warrants full consideration by the Court. Even one ground of appeal is sufficient.
 11. The applicant has raised nine grounds of appeal, one of them being that the learned trial judge erred in law in ignoring the constitutional violation of the right to fair hearing guaranteed under Article 50(1) of the [Constitution](#) by requiring him to provide security in the sum of Kshs.8,300,000 as a condition for setting aside of the *ex parte* judgment, when the applicant had shown that the *ex parte* judgment was entered because of his advocate's failure to attend court. We think this ground is arguable.
 12. On the nugatory aspect, it was not disputed that the 1st respondent has commenced execution of the judgment and has sought to have the applicant committed to civil jail for his failure to pay the decretal sum. If the applicant is committed to civil jail and eventually his appeal succeeds, the appeal will have been rendered nugatory because the applicant cannot be adequately compensated for the loss of freedom as a result of his imprisonment.



13. In view of the foregoing, we are inclined to exercise our discretion in favour of the applicant. We hereby grant the orders sought. The applicant shall bear the costs of the application.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF FEBRUARY 2025.

D. K. MUSINGA (PRESIDENT)

.....

JUDGE OF APPEAL

F. SICHALE

.....

JUDGE OF APPEAL

F. OCHIENG

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

