



**Mburu & 5 others v Barclays Bank of Kenya Limited (Civil Application  
Sup 22 of 2019) [2024] KECA 366 (KLR) (12 April 2024) (Ruling)**

Neutral citation: [2024] KECA 366 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION SUP 22 OF 2019  
DK MUSINGA, SG KAIRU & M NGUGI, JJA  
APRIL 12, 2024**

**BETWEEN**

**ALICE NDUTA MBURU ..... 1<sup>ST</sup> APPLICANT  
ALICE NDUTA KIMANI ..... 2<sup>ND</sup> APPLICANT  
ANDREW KIBE ..... 3<sup>RD</sup> APPLICANT  
JULIET NJERI ..... 4<sup>TH</sup> APPLICANT  
ANCALO LIMITED ..... 5<sup>TH</sup> APPLICANT  
FLORENCE WANJIKU KINYANJUI ..... 6<sup>TH</sup> APPLICANT**

**AND**

**BARCLAYS BANK OF KENYA LIMITED ..... RESPONDENT**

*(An application for Leave to Appeal from the Judgment and Decree of  
the Court of Appeal of Kenya at Nairobi (Waki, Nambuye & Murgor,  
JJ.A.) delivered on 20th September 2019 in Civil Appeal No. 164 of 2018)*

**RULING**

1. The applicant's notice of motion dated 18<sup>th</sup> November 2019 seeks certification and leave to appeal to the Supreme Court from the decision of this Court (Waki, Nambuye & Murgor, JJ.A.) in Civil Appeal No. 164 of 2018 that was delivered on 20<sup>th</sup> September 2019.
2. The premise of the applicant's appeal that was dismissed by this Court was that the High Court erred in failing to find that a mareva injunction was wrongfully sought and granted against the applicants, and that as a consequence they were entitled to compensation by way of damages.
3. The applicants contended that their intended appeal raises a point of law of general public importance, and urged this Court to so certify and grant leave to appeal as sought.



4. At the hearing of the application there was no attendance by the applicants’ advocates, M/s Kimandu & Ndegwa, but they had filed submissions that are dated 4<sup>th</sup> November 2023, which we considered.
5. The respondent, through M/s Mohammed Muigai LLP, opposed the application. They filed submissions on 23<sup>rd</sup> February 2024, which were briefly highlighted by their learned counsel, Mr. Angwenyi. Counsel submitted, inter alia, that the application is incompetent as it was filed outside the stipulated period under rule 42 (b) of this *Court’s Rules*, which requires that such an application be made within fourteen (14) days of the impugned decision.
6. Rule 42 states as follows:
  - “ 42. Where no appeal lies unless the superior court certifies that a point of law of general public importance is involved, an application for such a certificate may be made-
    - a. informally, at the time when the decision against which it is desired to appeal is given; or
    - b. by motion or chamber summons according to the practice of the superior court, within fourteen days after that decision.”
7. There is no dispute that the applicants filed their application on 18<sup>th</sup> November 2019. That was forty-eight (48) days after delivery of this Court’s judgment on 20<sup>th</sup> September 2019. No extension of time was granted by the Court prior to filing of the application.
8. Consequently, we find and hold that the application is incompetent, as it was filed outside the stipulated period. Having arrived at that finding, it would be superfluous to consider whether the intended appeal raises any point of general public importance.
9. The notice of motion dated 18<sup>th</sup> November 2019 is hereby struck out with costs to the respondent.

**DATED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF APRIL, 2024.**

**D. K. MUSINGA, (P).**

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**JUDGE OF APPEAL**

**S. GATEMBU KAIRU, FCIArb**

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**JUDGE OF APPEAL**

**MUMBI NGUGI**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

