



REPUBLIC OF KENYA



**Kenya National Highways Authority v Weighbridge & 2 others (Civil Application E010 of 2024) [2024] KECA 704 (KLR) (21 June 2024) (Ruling)**

Neutral citation: [2024] KECA 704 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E010 OF 2024  
HA OMONDI, JA  
JUNE 21, 2024**

**BETWEEN**

**KENYA NATIONAL HIGHWAYS AUTHORITY ..... APPLICANT**

**AND**

**OFFICER IN CHARGE BUSIA WEIGHBRIDGE ..... 1<sup>ST</sup> RESPONDENT**

**THELMAX CONTRACTORS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 3<sup>RD</sup> RESPONDENT**

*(An application for extension of time to file an appeal out of time from the judgment of the High Court at Kakamega, (W. Musyoka, J.) dated 8th July 2022 in Misc. Criminal Application No. 58 of 2015)*

**RULING**

1. The application dated 23<sup>rd</sup> January 2024 brought pursuant to rule 4 and rule 5(2)(b) of the [Court of Appeal Rules](#); seeks that the Notice of Appeal filed on 20<sup>th</sup> August 2022, be deemed as properly filed; extension of time within which to file an appeal against the judgment of Musyoka, J, in Kakamega Misc. Criminal Application No. 58 of 2015; delivered on 8<sup>th</sup> July 2022 out of time; an order for stay of proceedings in Kakamega Misc. Criminal Application No. 58 of 2015, pending hearing and determination of the appeal; and that costs be provided. The affidavit in support of the application of even date is sworn by the applicant's Corporation Secretary, Norah. A. Odingo.
2. The Thelmax (the 1<sup>st</sup> respondent) had filed a Notice of Motion against the applicant, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to release number plates, registration mark and number for its motor vehicle make Mitsubishi Fuso; and to prohibit the prosecution of its driver, on allegations of excess load; and compensation. The judgment was delivered on 8<sup>th</sup> July 2022 in favor of the 1<sup>st</sup> respondent awarding it general damages of Kshs.3,000,000/-, and special damages of Kshs.5,000,000/-.



3. The applicant was not aware of the judgment as the trial judge went on transfer; and the pending rulings were not delivered on the dates allocated; it was not until 20<sup>th</sup> August 2022 that it became aware of the decision; and being aggrieved lodged a Notice of Appeal on the same date. The applicant, requested for typed copies of proceedings; then filed an application for stay, which was dismissed on the ground that the applicant being a government agency, the applicable law in filing the appeal was the *Government Proceedings Act*.
4. The applicant, on the issue of admission of the Notice of Appeal in court record filed an application dated 27<sup>th</sup> September 2022, however the said issue was not addressed by the court in its ruling; as such the notice of appeal is still not properly on record; and the applicant was unable to file its appeal owing to the fact that the notice of appeal filed was not properly on record; and as such there is need to have the same regularized.
5. There is a mishmash in this matter in the sense that whilst the application moves this court under Rule 4 of the *Court's Rules*, for purposes of extending time within which to file a notice of appeal, the applicant is also seeking orders which can only be dealt with by a full bench under Rule 5(2)(b). It would be rather messy for this court, sitting as a single judge bench, to partially deal with the prayers sought within its ambit, then leave out the other prayers for a full bench to deal with. It may serve the applicant well to consider the provisions of Rule 55 which provides that:
  55. (1) Each application, other than an application specified in sub-rule (2), shall be heard by a single judge: Provided that such application may be adjourned by the judge for determination by the Court.
  2. This rule shall not apply to:
    - a. an application for leave to appeal;
    - b. an application for a stay of execution, injunction, or stay of further proceedings;
    - c. an application to strike out a notice of appeal or an appeal; or
    - d. an application made as ancillary to an application under paragraph (a) or (b) or made informally in the course of a hearing.
6. I decline to grant the prayers sought in the application; due to its incompetence; and direct that the applicant files separate appropriate applications. Costs to the respondent.

**DATED AND DELIVERED AT KISUMU THIS 21<sup>ST</sup> DAY OF JUNE 2024.**

**H. A. OMONDI**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

