



Nairobi City Water & Sewerage Company v Capture Solutions Limited (Civil Application E136 of 2022) [2022] KECA 1213 (KLR) (4 November 2022) (Ruling)

Neutral citation: [2022] KECA 1213 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E136 OF 2022
F SICHALE, JA
NOVEMBER 4, 2022**

BETWEEN

NAIROBI CITY WATER & SEWERAGE COMPANY APPLICANT

AND

CAPTURE SOLUTIONS LIMITED RESPONDENT

(An Application for extension of time to apply for leave to appeal against the ruling of the High Court of Kenya at Milimani Commercial & Tax Division (Majanja, J), dated 27th August 2020 IN Misc Application No. E679 of 2020.)

RULING

1. The application before me sitting as a Single Judge is a motion dated April 25, 2022, brought pursuant to the provisions of Articles 159 (d), 164 (3), 201 (d), 227, 259 of *the Constitution* of Kenya, Sections 2, 3A, 3B, of the *Appellate Jurisdiction Act*, Rules 4, 39 (b), and 47 of the *Court of Appeal Rules* and all enabling provisions of the Law in which Nairobi Water and Sewerage Company Limited (the applicant herein) seeks to be granted an extension of time to file an application for leave to appeal from the decision of Hon Justice Majanja dated 27th August 2020.
2. The applicant further seeks that the ensuing application for leave to appeal be heard and determined prior to Civil Appeal No. E514 of 2020, *Nairobi City Water and Sewerage Services v Capture Solutions Limited*.
3. The motion is supported on the grounds on the face of the motion and an affidavit sworn by Martin Nangole, the Information and Communications Director of the applicant, who inter alia attributed the delay in moving the Court to Covid-19, as the impugned decision was made at the height of Covid-19, at which time the applicant's management was involved in response to the unprecedented event and that during this period, there were numerous operational challenges leading to inadvertent delays in various processes.



4. The motion is opposed vide a replying affidavit sworn May 4, 2022, by Lorenzo Boncompagni, a Director of the respondent who deposed *inter alia* that the applicant had filed a similar application; being Civil Appeal No. 230 of 2021, which was dismissed for being out of time and that further mere mention of Covid-19 pandemic was not a plausible and credible reason for the inordinate delay as the applicant had vigorously defended the application for recognition and enforcement of the arbitral award at the very height of the pandemic.
5. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the replying affidavit, the respondent's submissions and authorities and the law.
6. It is indeed not in dispute that the applicant herein, had previously moved the Court in an application to a Single Judge (Ouko JA- as he then was), seeking extension of time to file and serve notice of appeal out time against the very same orders that is now being sought in the instant application which application was dismissed on April 23, 2021 for want of merit.
7. It is also not in dispute that subsequent thereafter, the applicant again moved this Court (M' Inoti, Mohammed & Kantai JJ.A) seeking *inter alia* to be granted leave to file an appeal from the decision of Majanja J dated August 27, 2020, which application was again dismissed by the Court on March 4, 2022, the Court having found no merit in the same. More tellingly, the Court in its ruling stated *inter alia* as follows;

in the present application the applicant is seeking leave to appeal the decision of the High Court dated August 27, 2020 to this court after reaching a dead end on the application for extensions of time under rule 4 of the Court of Appeal Rules...." (Emphasis added)
8. From the circumstances of this case, the applicant's application as filled is certainly a gross abuse of the court process and a waste of the Court's precious judicial time as the applicant can now not be heard to make the same application that was previously dismissed by a Single Judge and a 3 Judge Bench of this Court.
9. Accordingly, the applicant's motion dated April 25, 2022, is without merit and the same is hereby dismissed in its entirety with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF NOVEMBER, 2022.

F. SICHALE

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

