



**Ogochi v Kenya Pipeline Company Limited (Cause E042 of 2021)
[2025] KEELRC 1077 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1077 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E042 OF 2021
AN MWAURE, J
APRIL 4, 2025**

BETWEEN

MICHAEL OGOCHI CLAIMANT

AND

KENYA PIPELINE COMPANY LIMITED RESPONDENT

RULING

1. The Respondent/Applicant filed a Notice of Motion dated 7th November 2024 under Certificate of Urgency seeking the following orders that:
 1. Spent
 2. Spent
 3. This Honourable Court be pleased to allow this application and order stay of execution of the Judgment and orders of the Employment and Labour Relations Court (Honourable Justice David Nderitu) dated 17th October 2024 pending the hearing and determination of this application.
 4. This Honourable Court be pleased to allow this application and order stay of execution of the Judgment and orders of the Employment and Labour Relations Court (Honourable Justice David Nderitu) dated 17th October 2024 pending the hearing and determination of the intended appeal.
 5. Costs of the application be in the cause
2. The application is expressed to be brought under Order 42 Rule 6(1) of the Civil Procedure Rules, Sections 1A, 1B, 3, 3A and 63(e) of the [Civil Procedure Act](#) and all other enabling provisions of the law.



Respondent/Applicant's case

3. The application is supported by the affidavit sworn by Gloria Khafafa, the Respondent's Legal Manager, dated on even date as the application.
4. The Respondent/Applicant avers that it was dissatisfied with the entire judgment delivered on 17th October 2024 by Hon. Justice David Nderitu and has filed an appeal with the Court of Appeal in Nakuru.
5. The Respondent/Applicant avers that the intended appeal has raised arguable issues for determination as set in the draft Memorandum of Appeal.
6. The Respondent/Applicant avers that at any time execution may commence since the stay of execution issued on 17th October 2024 is lapsing.
7. The Respondent/Applicant avers that it will suffer substantial loss and irreparable damage if the execution of the Judgment is not stayed.
8. The Respondent/Applicant avers that it is willing to furnish security in the form of a bank guarantee as the court orders for the due performance of the Judgment of 17th October 2024 as may ultimately be binding.
9. The Respondent/Applicant avers that the amount involved and the imminent execution thereof would have great repercussions and cause irreparable harm. Furthermore, if the decretal sum is paid and the intended appeal is successful, it may not be able to recover the money from the Claimant/Respondent.
10. The Respondent/Applicant avers that the application has been filed without unreasonable delay, and the Claimant/Respondent will not suffer any loss as the appeal will be finally determined whether the Judgment dated 17th October 2024 was justly entered in his favour and willing to comply with any conditions and terms as to security as this Honourable Court may deem fit to impose.
11. The Respondent/Applicant avers that in the best interest of justice, the execution of the Judgment dated 17th October 2024 be stayed pending the hearing and determination of the intended appeal.

Claimant/Respondent's case

12. In opposition to the application, the Claimant/Respondent filed a replying affidavit dated 27th January 2025.
13. The Claimant/Respondent avers that the application is bad in law, misconceived, vexatious, frivolous, and abuse of the court process.
14. The Claimant/Respondent avers that this Honourable Court has no jurisdiction to hear and determine an application to lodge a notice of appeal out of time.
15. The Claimant/Respondent avers that the Respondent/Applicant has ignored the Court of Appeal rules and the relevant provisions of the law by filing an application for an extension of time to lodge and serve a notice of appeal to this Honourable Court.
16. The Claimant/Respondent avers that the Respondent/Applicant has not provided a sufficient explanation for its failure to lodge the notice of appeal on time but only made an attempt after the close of the window period.



17. The Claimant/Respondent also avers that the Respondent Applicant has shown unreasonable delay which should not be entertained by this Honourable Court warranting no stay order.
18. The Claimant/Respondent avers allowing the application will prejudice him and he should not be deprived of the fruits of his judgment.
19. The Claimant/Respondent urged that this Honourable Court dismiss the application with costs.
20. The application was canvassed by way of written submissions.

Respondent/Applicant's written submissions

21. The Respondent/Applicant avers that this Honourable Court has jurisdiction to extend the time filing and serving the Notice of Appeal as provided under section 7 of the [Appellate Jurisdiction Act](#) which states as follows:

“The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired:

Provided that in the case of a sentence of death, no extension of time shall be granted after the issue of the warrant for the execution of that sentence.”

22. The Respondent/Applicant relied on the case of *Diamond Trust Bank v Invesco Assurance Company Limited* and another [2021] eKLR the court held that section 7 of the [Appellate Jurisdiction Act](#) grants the High Court jurisdiction to extend the time for filing a Notice of Appeal and emphasizes that this section requires a straightforward, literal interpretation and should not be overlooked, as doing so would disregard the clear legal provisions it contains. In *Racheal Njambi Thuo v County Government of Nyandarua* [2023] eKLR the court held that the court had jurisdiction to grant orders sought as per section 7 of the [Appellate Jurisdiction Act](#).
23. The Respondent/Applicant submitted that it was dissatisfied with the judgment and attempted to file a Notice of Appeal through the e-filing system, also requesting a copy of the judgment via a letter dated 28th October 2024. The Respondent/Applicant submitted that it discovered that it was not mapped in the system, which prevented filing the notice of appeal, and requested mapping before the 14-day deadline expired.
24. The Respondent/Applicant also submitted that it filed the Notice of Appeal via email address elrcnakuru@gmail.com on 31st October 2024. Throughout the pendency of the suit, it filed its pleadings and written submissions using the said email address. The Respondent/Applicant further submitted that it was mapped in the e-filing system on 4th November 2024 and went ahead to file the application for stay of execution and notice of intention to lodge an appeal out of time together with the annexures.
25. The Respondent/Applicant submitted that it will suffer great prejudice if not allowed to appeal against the Judgment and order issued on 17th October 2024. The Respondent/Applicant also submitted that it has satisfied the conditions for the extension of time as set out in the case of *Purity Muthoni Kirimu*



v Ephentus Karani Makanga & 2 Others [2022] eKLR where the court cited the case Nicholas Kiptoo Arap Korir Salat v IBEC & 7 others [2014] eKLR where the court stated as follows:

- “ 1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

26. The Respondent/Applicant contended that the delay in filing the Notice of Appeal is not inordinate and it adduced evidence to demonstrate that it took necessary steps to file this instant application once approval was granted to file documents in the E-filing system.
27. The Respondent/Applicant submitted that the Claimant/Respondent will suffer prejudice as it deposited a bank guarantee on 16th December 2024 of the decretal sum and shared it with the Claimant/Respondent which is enforceable if the appeal is not successful.
28. The Respondent/Applicant urged this Honourable Court to allow the application as prayed by granting an extension of time for it to file a Notice of intention to appeal in terms of Section 7 of the *Appellate Jurisdiction Act*.

Claimant/Respondent’s written submissions

29. The Claimant/Respondent relied on the case of Kariuki v Wangeci & 7 Others [2024] KECA 1692 (KLR) where the court stated each case is to be determined on its own facts as held in Andrew Kiplagat Chemarango v Paul Kipkorir Kibet [2018] eKLR where the Court of Appeal stated that the law does not specify a fixed period for delays but emphasizes that delays must be plausibly and satisfactorily explained. Courts exercise discretion favourably only when valid and clear reasons for the delay are provided.
30. In *Touring Cars Limited & Another v Ashok Kumar Mankanji* [2000] KECA 18 (KLR) where Lakha JA was of the view that Rule 4 of the Court of Appeal Rules grants broad discretion in applications for time extensions, without distinguishing between case types. Courts are required to consider the circumstances and prioritize the principle that justice must be done. Prejudice or its absence is a highly relevant factor and may even be decisive in ensuring justice.
31. In *Fakir Mohamed v Joseph Mugambi & 2 others* [2005] eKLR Waki JA expressed himself as follows:

“The exercise of this Court’s discretion under Rule 4... is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay,



the reason for the delay(possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance-are all relevant but not exhaustive factors.”

32. The Claimant/Respondent submitted that the Respondent/Applicant delayed until the 14-day deadline had passed to file the notice of appeal. In response, the Respondent/Applicant stated that it filed the notice of appeal on 31st October 2024 via the e-filing system, awaiting a copy of the judgment to review its reasoning before deciding to appeal.
33. The Claimant/Respondent submitted that the Respondent/Applicant had not made up its mind on whether or not it would pursue the appeal considering it as a delaying tactic to drag the matter and deny the fruits of his judgment. The Claimant/Respondent submitted that the Respondent/Applicant has failed to explain to this Honourable Court whether the intended appeal has any chances of success. The Claimant/Respondent relied on the case of *Misoi & 2 others v Muhindi* [2023] KECA 1295 (KLR) where the court held that the applicant’s reasons for the delay are deemed unsatisfactory, leading to the conclusion that the notice of motion dated 26th May 2023 lacks merit.
34. The Claimant/Respondent submitted that costs follow the event and relied on Section 27 of the *Civil Procedure Act*. The Claimant/Respondent urged this Honourable Court to find that the application lacks merit and dismissed it with costs in his favour.

Analysis and determination

35. The court has thoroughly gone through the application, the replying affidavit as well as the submissions by both parties, the issue for determination is whether the application is merited.
36. Order 42 Rule 6(2) of the Civil Procedure Rules provides as follows:
 - “(2) No order for stay of execution shall be made under subrule (1) unless—
 - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
37. The court reiterates the cases of *Nicholas Kiptoo Arap Korir Salat V IBEC & 7 others* (supra) and *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* (Supra) which have been elaborated earlier in this ruling on the extension of time and discretion of the court to extend the time.
38. The court noted that the Claimant/Respondent in their replying affidavit averred that the court has no jurisdiction to hear this application. However in Section 7 of the Appellate Jurisdiction provides:-

“The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired:



Provided that in the case of a sentence of death, no extension of time shall be granted after the issue of the warrant for the execution of that sentence.”

39. The court is also persuaded by the case of Rachel Njambi Thuo v County Government Of Nyandarua [2023] eKLR which stated that the court had jurisdiction to grant orders sought as per Section 7 of the *Appellate jurisdiction Act*.
40. In this instant application, the Respondent/Applicant had lodged a Notice of Appeal and it has clearly explained that it had challenges with the E-filing system while lodging the appeal forcing it to share the appeal vide the court’s registry email to that effect. He filed the Notice of Appeal on 31st October 2024. Judgment had been delivered on 17th October 2024. The applicant explained he was unable to access the e-filing platform until 5th November 2024 when he filed this application. The court finds the time differences are not long and the delay cannot be said to be inordinate.
41. The Respondent/Applicant has also met the criteria for a stay of execution as laid out in Order 42 Rule 6(2) of the Civil Procedure Rules especially on the security of the decretal sum in that he says he provided a bank guarantee. There is no attachment of the bank guarantee indicated in its submissions however.
42. Flowing from the foregoing, the court finds that the application dated 7th November 2024 has merit and allows it on the following conditions:
 - a. Time for leave to lodge the notice of appeal is extended to 14 days hereof.
 - b. A stay of execution is also hereby granted pending the hearing and determination of the intended appeal.
 - c. The decretal sum of Kshs.1,120,000/= is to be deposited in a joint interest earning account in the names of both advocates’ names within 21 days of delivering this ruling.
 - d. Costs of this application will be in the cause.
 - e. That in default, the stay orders shall automatically lapse and execution to proceed.
 - f. That upon depositing the decretal sum, the Respondent/Applicant shall file and serve its Record of Appeal within thirty (30) days thereof.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 4TH DAY OF APRIL, 2025.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of



the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

