



**Magic Group of Companies Ltd v Ogango & 59 others (Appeal
E152 of 2024) [2025] KEELRC 1383 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1383 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E152 OF 2024
NJ ABUODHA, J
MAY 9, 2025**

BETWEEN

MAGIC GROUP OF COMPANIES LTD APPELLANT

AND

ELIZABETH ADHIAMBO OGANGO 1ST RESPONDENT

SAMWEL MAKORO OKONYE 2ND RESPONDENT

**DOMINIC NYANDIEKA & 57 OTHERS & 57 OTHERS & 57 OTHERS & 57
OTHERS & 57 OTHERS & 57 OTHERS 3RD RESPONDENT**

RULING

1. The Appellant filed application dated 22nd May, 2024 brought under Order 42, Rules 1 of the [Civil Procedure Rules](#) and Sections 1A, 1B,3A and 68(e) of the [Civil Procedure Act](#).
2. The Appellant is seeking for orders that Memorandum of Appeal be allowed as prayed and the Appeal herein be allowed and Judgment by Hon. H.M Ng'ang'a in ELRC 1259/2019, 1260 of 2019 and 1261 of 2019 being the lead file delivered on 23rd September, 2023 as well as the resultant orders be and are hereby set aside.
3. The application was supported by the grounds set out in the Application herein and the Affidavit of Esther Nduta Njugunawho averred that:-
 - a. Judgment was entered against the Appellant by Hon. H.M Ng'ang'a on 15th September, 2023 in ELRC 1259/2019, 1260 of 2019 and 1261 of 2019 with ELRC 1261 of 2019 being the lead file is desirous to file and or institute an appeal against the said judgment.
 - b. The Appellant will suffer a grave travesty of justice and immense prejudice if the orders sought herein are denied and consequently its right to appeal stifled. That the court has the power and jurisdiction to grant the orders sought. That the Appellant sought leave to appeal out of time.



4. In reply the Respondent filed his Replying Affidavit sworn on 17th June, 2024 by Willis Wetaba the Advocate in conduct of the matter and opposed the Appellant's Application where counsel averred that:-
- a. The Applicant had filed a similar application dated 22nd May, 2024 at the trial court which was coming up to court on 10th July, 2024 for further directions and counsel had filed the Respondent's response. That the two applications are active in this court and the trial court which was an abuse of court process hence this Application should be dismissed.
 - b. They raised a number of issues in their response before the trial court and the same issues have not been addressed before this court. That the matter was previously handled by the firm of A.I Onyango up to judgment level and the rules and practice of representation require that an incoming law firm after judgment ought to either seek the leave of court to come on record or file a consent with the outgoing law firm then come on record.
 - c. Despite raising the issue of representation at the trial court the firm of PMA Advocates LLP filed another Notice of Appointment of Advocate notwithstanding that the same was being done post judgment. That the documents filed in this court by the said firm were filed by strangers as representation was key in any matter which cannot be wished away making the application fatally and incurably defective.
 - d. The Applicant did not bother to explain why time should be extended in this matter and there were no reasons given to allow this court exercise its discretion to extent time. That the Applicant has made an application for stay in this court just like in the trial court and the same should not be allowed as there is no proposal for security for costs, the application has been brought with unreasonable delays, no disclosure of financial capability of the Respondent and the Respondent was conducting a similar business through Global Threat Solutions Limited and have brought the same company as an objector bringing in to questions their intentions with regard to satisfying the judgment.
 - e. The application seeks to set aside the judgment an act which can only be done in the fullness of time after hearing the appeal. That the Appeal is not arguable and has zero chances of success. That the amounts in question constituted salaries and damages for unfair termination of the Respondent's employees whose plight must be considered in this matter. That the employees should be allowed to access the said amounts and if not the same be deposited in a joint interest earning account in light of justice and fairness.
5. The Applicant filed a supplementary affidavit sworn on 28th November, 2024 by the Esther Nduta Njuguna who averred that:-
- a. The averments in the Respondent's replying affidavit were falsehoods and the Respondent did not show any prejudice it shall suffer if the orders sought were granted. That the Respondent was ignorant to want this court respond to issues raised in another court. That the advocates on record entered consent with previous advocates.
 - b. That it was impeded from filing its appeal timely due to inability to secure the typed and certified proceedings and judgment from trial court within the prescribed time. That the Applicant has a right to appeal when dissatisfied with the decision of the lower court. That the allegation by the Respondent's advocate that the Applicant and Global Threats Solutions Limited were one company was misleading since no substantive evidence has been provided to prove the false allegations.



- c. They were apprehensive that they shall be unable to recover the decretal sum from the Respondents in the event the stay of execution is not granted and the appeal is rendered successful. That the Respondents have not provided any evidence of their financial capability to show they will be in a position to refund the decretal sum if it is paid out to them and the appeal succeeds. That a party cannot enjoy the fruits of the judgment when an appeal is still active in court.
 - d. That it had an arguable appeal with likelihood of success. That the Applicant was willing to deposit an amount to a joint interest earning bank account to be held by advocates of both parties when directed by the court. That the Applicant was dealing with a situation of ghost workers who have never been employed by the Applicant and subjecting the Applicant to a scenario of paying money to ghost workers who don't exist was prejudicial, unfair and unconstitutional. That it will suffer substantial loss and miscarriage of justice if orders sought herein are not granted.
6. The Application was disposed of by written submissions.

Determination

7. This court has fully considered the Applicant's submissions dated 28th November, 2024 and the Respondent's submissions dated 5th December, 2024 in making the final determination in this matter. Section 79G of the *Civil Procedure Act* is the guiding law in answering the question whether the prayer to enlarge time to file the appeal is merited which provides that the appeal ought to be filed within 30 days.

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.

8. In *Charles N. Ngugi v ASL Credit Limited* [2022] eKLR the court held as follows;

However, the intended appeal ought to have already been filed before or together with an application seeking leave to extend time for filing an appeal.

9. In addition the above case relied on court of Appeal decision as follows on grounds the courts need to look at on such an application;

Some of the factors that aid Courts in exercising the discretion whether to extend time to file an appeal out of time were suggested by the Court of Appeal in *Thuita Mwangi v Kenya Airways Ltd*[2003] eKLR. They include the following:

- i) The period of delay;
- ii) The reason for the delay;
- iii) The arguability of the appeal;
- iv) The degree of prejudice which could be suffered by the if Respondent the extension is granted;
- v) The importance of compliance with time limits to the particular litigation or issue; and
- vi) The effect if any on the administration of justice or public interest if any is involved.

10. In this particular case the application has been filed with a draft Memorandum of Appeal. The Judgment in this matter was delivered on 15th September, 2023 and this Application herein filed on



22nd May, 2024. This is around 8 months after delivery of the Judgment. Both parties relied on the letter dated 28th September, 2023 by the Applicant's advocates requesting for the certified copy of the Judgment. The Applicant alleged that the delay in supply of the certified copy of judgment and proceedings caused the delay in filing the appeal.

11. This court also notes that nowadays most judgments are posted on the CTS for advocates to access them. It is not clear why the same did not apply in this case. The Appellant has not illustrated when it got the said judgment or if it is just avoiding knowledge of the same. It is true therefore the Appellant has not come to this court with clean hands.
12. The court notes that the period of delay was barely around seven months since 30 days lapsed on 15th October, 2023. The court notes the reasons given by the Appellant and holds this period to be inordinate delay but in the interest of justice the court will give the Appellant a right to be heard as a last chance.
13. On the issue of an arguable Appeal the court has looked at the draft memorandum of Appeal attached by the Applicant and notes it has grounds which may need to be addressed by the court on appeal more so on the issue of ghost workers and the awards awarded at the trial court. The issue raised by the Applicant running its business as Global Threat Solutions Limited is an issue which will be determined in appeal. The prayer for setting aside at this stage will not be entertained as the same will be determined upon the determination of the appeal.
14. This court is not in the habit of shunning away a litigant unheard when they approach a court though not within a reasonable time the party explained the reason for the delay. On the issue of prejudice to be suffered the court will balance the interests of the parties as shall be seen later.
15. On the issue of representation the Applicant in its supplementary affidavit attached a consent by the advocates hence it should not be an issue by now. Similarly, on the issue of having two active applications in the trial court and this court the leave to appeal out time can only be granted in this court and not trial court hence properly before the court and the stay of execution can be given by either court.
16. On the other issue of stay orders the grounds upon which this court exercises the discretion to grant a stay of execution are well governed by the [Civil Procedure rules](#) under Order 42 Rule 6 which stipulates 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.
17. In [Joseph Odide Walome v David Mbadi Akello](#) [2022] eKLR the court in support of the above provision held as follows;

An applicant needs to satisfy the court on the following conditions before they can be granted the stay orders:

 - a. Substantial loss may result to the applicant unless the order is made,
 - b. The application has been made without unreasonable delay, and
 - c. Such security as the court orders for the due performance of the decree or order as may ultimately be binding on the applicant has been given by the applicant.



18. On the issue of substantial loss, this has been ably explained by Gikonyo J in the case of *James Wangalwa & Anor v Agnes Naliaka Cheseto* [2012] eKLR. Where the learned Judge observed:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process...The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail.

19. As observed in the cases cited above, having allowed the prayer for filing of appeal out of time it would be prejudicial to the Appellant if it succeeds on the Appeal yet the Respondent has already executed the decree in the lower court. It would be in the interest of justice to stay execution until the issues the Appellant has raised in its appeal are ventilated. This will avoid rendering the appeal nugatory.

20. On the second limb of approaching the court without unreasonable delay, although the court has noted that the Appellant has not come to court with clean hands, the court has given the Appellant a last chance to ventilate their issues.

21. On the issue of security for costs the Appellant submitted that they were willing to abide by the court’s directions on security for courts in their supplementary affidavit that it was willing to deposit the security for costs in an interest earning account in the name of both advocates.

22. The Applicant has therefore met the conditions for grant of the orders of stay.

23. The application is therefore found with merit and is hereby allowed in the following terms: -

- a. The Draft Memorandum of Appeal is deemed duly filed.
- b. The Appellant shall within 60 days of this order submit to the Court as suitable bank guarantee or charge on immovable property to the extent of the decretal sum herein. In default execution to proceed.

24. Costs shall abide the outcome of the appeal.

25. It is so ordered.

DATED AT NAIROBI THIS 9TH DAY OF MAY, 2025

DELIVERED VIRTUALLY THIS 9TH DAY OF MAY, 2025

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

