



**Mosota v Timsales Limited (Miscellaneous Civil Application
E045 of 2022) [2023] KEELRC 2180 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2180 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
MISCELLANEOUS CIVIL APPLICATION E045 OF 2022
DN NDERITU, J
SEPTEMBER 21, 2023**

BETWEEN

GEOFFREY MOGAKA MOSOTA APPLICANT

AND

TIMSALES LIMITED RESPONDENT

RULING

I. Introduction

1. By way of a notice of motion dated November 18, 2022 (the application) the Applicant, through Mukite Musangi & Co Advocates, prays for the following –
 1. Spent
 2. That this Application be heard and stay of proceedings at the lower court in Molo CMCC do issue *ex-parte* in the first instance pending inter-partes hearing and determination of this Application.
 3. That this Honourable court be pleased to enlarge and or extend time and grant the Applicant leave to file an appeal out of time against the ruling delivered on September 27, 2022 in Molo CMCC No 151 OF 2018; Geoffrey Mogaka Mosota V Timesales Ltd.
 4. That there be stay of proceedings of the substantive suit in Molo CMCC No 151 of 2018; Geoffrey Mogaka Mosota V Timsales Ltd pending the hearing and determination the appeal as may be preferred against the said ruling upon leave being granted by this Honourable Court.
 5. That upon grant of leave to file the said appeal out of time, an order for stay of proceedings in Molo CMCC No 151 of 2018; Geoffrey Mogaka Mosota vs Timsales Ltd, do issued pending hearing and determination of the resultant appeal to be filed in this court.



6. That the costs of this application be provided for.
2. The application is expressed to be brought under Order 51 Rule 1, Order 50 Rule 6, Order 42 Rule 6(1)&(2) of the [Civil Procedure Rules](#) and Section 3A of the [Civil Procedure Act](#).
3. The application is based on the grounds on the face of it and supported with the affidavit of Winny Bett Jepkoech, Advocate for the Applicant, sworn on November 18, 2022 with one annexure thereto – draft memorandum of appeal.
4. On November 21, 2022 this matter came up in court under a certificate of urgency and the court issued some interim orders among them staying proceedings in Molo CMCC No 151 of 2018 – *Geoffrey Mogaka Mosota V Timsales Limited*.
5. Upon service of the application on the Respondent this matter came up in court on November 28, 2022 for further directions. Miss Bett appeared for the Applicant while Mr Gekong'a appeared for the Respondent and it was agreed that the application be canvassed by way of written submissions. The Respondent was to file a replying affidavit and the Applicant was granted leave to file a further or supplementary affidavit upon service of the replying affidavit.
6. On January 25, 2023 when the matter came up in court for mention for confirmation of compliance with the orders of November 28, 2022 Mr Momanyi appeared for the Applicant holding brief for Miss Bett but there was no appearance for the Respondent. The Respondent did not file a replying affidavit and neither party filed written submissions but counsel for the Applicant prayed that the application be allowed as prayed.
7. In the supporting affidavit the Applicant states that the matter in the lower court concerns work injury compensation yet under Sections 16, 23, and 53 of the [Work Injury Benefits Act](#) (WIBA) the lower court lacks jurisdiction. Consequently, the Applicant raised a preliminary objection (PO) to the suit proceeding in the lower court but the PO was dismissed in a ruling delivered on September 27, 2022. It is that ruling that the Applicant is seeking leave to appeal out of time in this application.
8. It is deposed that the instructions to file the appeal against the ruling were given after the timelines set for filing of the appeal had expired hence the prayer for leave to appeal out of time. Curiously, no reason is given at all as to why the instructions were not given within the time allowed for filing of an appeal.

II. Determination

9. The Applicant has not presented to the court the plaint and the defence filed in the matter before the lower court to enable this court establish exactly what the issues are and the subject matter thereof. The PO that was raised has not been availed and the ruling intended to be appealed has not been availed. In other words, this court has not been illuminated on the proceedings in the lower court.
10. Further, and without prejudice to the foregoing paragraph, no explanation has been offered for the delay in filing of the appeal within the timelines set in law. There is no affidavit by an officer or a director of the Applicant explaining why the instructions to file the intended appeal were not given within time and the affidavit by the Applicant's counsel does not explain the same.
11. To put the matter in the proper context and perspective this court poses these rhetorical questions – How can this court establish and confirm that there is indeed a suit pending before the lower court and that there was a ruling made as alleged? What is the subject matter of the proceedings in the lower court? What is the defence raised by the Applicant to the suit in the lower court?



12. The above questions, which are very relevant to this application to enable the court to arrive at a fair and just ruling, find no answer in the application as filed by the Applicant.
13. For the foregoing reasons, the application herein is devoid of merits and the same is hereby dismissed.

III. Orders

14. The Applicant's notice of motion dated November 18, 2022 has no merits and the same is hereby dismissed with costs and the interim orders issued on November 21, 2022 are hereby vacated.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT NAKURU THIS 21ST DAY OF SEPTEMBER, 2023

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DAVID NDERITU

JUDGE

