



**Konditi v Abson Motors Limited (Civil Application
25 of 2019) [2020] KESC 47 (KLR) (30 April 2020) (Ruling)**

Dominic B. Onyango Konditi v Abson Motors Limited [2020] eKLR

Neutral citation: [2020] KESC 47 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA**

CIVIL APPLICATION 25 OF 2019

**PM MWILU, DCJ & V-P, DK MARAGA, CJ, MK
IBRAHIM, SC WANJALA & I LENAOLA, SCJJ**

APRIL 30, 2020

BETWEEN

DOMINIC B. ONYANGO KONDITI APPLICANT

AND

ABSON MOTORS LIMITED RESPONDENT

The procedure applicable to the withdrawal of an interlocutory application from the Supreme Court's registry.

When withdrawing an application, the procedural requirements related to filing and payment of fees were applicable.

Reported by Beryl Ikamari

Civil Practice and Procedure - interlocutory application - filing and payment of filing fees at the Supreme Court's registry - where an applicant sought to withdraw an application from the Supreme Court Registry - procedure applicable to the withdrawal of an application.

Brief facts

The applicants made an application for stay of execution of the judgment of the Court of Appeal. Due to want of procedural compliance, the Deputy Registrar declined to admit the application. The applicant's advocates wrote a letter requesting the Deputy Registrar for formal communication and reasons for refusal to admit the application. The application, together with the correspondence, was forwarded to the duty judge who declined to certify the application as urgent and *inter alia* noted that the applicant had to persuade the court as to the procedure for initiating the legal action at the Supreme Court. He also ordered for the matter to undergo the normal hearing process *inter partes*. The Deputy Registrar then directed the applicant to file and serve the application within 7 days and set a mention date to confirm compliance.



The applicant's advocates wrote to the court saying that they would not seek the stay at the Supreme Court. The Deputy Registrar directed them to comply with the procedural steps of filing including payment of filing fees before formally withdrawing the application.

Issues

What procedure, as concerned filing and payment of filing fees, was applicable when a party sought to withdraw an application filed at the Supreme Court's registry?

Held

1. Rule 7E(9) of the Supreme Court Rules provided that pleadings would be deemed to have been filed with the court where the relevant copies of the pleadings had been lodged in the registry and where applicable the requisite fee had been paid. The applicant lodged copies of his application at the registry and while the application was admitted, the applicant never sought to be excused and was never exempted from fulfilling the procedural steps including the requirement as to the payment of the requisite fee in order to complete the lodging of the application.
2. Since the applicant wanted to withdraw the application, the application could not be served upon the respondent. It was only just for it to struck out for want of compliance with procedural steps *ab initio*.

Application struck out.

Orders

No order as to costs.

Citations

Statutes

None referred to

Advocates

None mentioned

RULING

A. Introduction

1. The applicant, through the firm of Lumumba & Lumumba Advocates, presented an application dated 5th August 2019 to the registry seeking stay of execution of the Court of Appeal judgment. However, for want of procedural compliance the Honourable Deputy Registrar of this Court declined to admit the same prompting the Advocates to forward the same through a letter dated 13th August 2019 and received on 14th August 2019 to the Honourable Deputy Registrar requesting for his formal communication and reasons for the refusal to admit the said application.
2. The said correspondence together with the application were forwarded to the duty Judge (Ibrahim SCJ) who declined to certify the application as urgent and noted, inter alia, that the applicant will have to persuade the court as to the procedure for initiating legal action in the Supreme Court. The duty Judge ordered that the matter goes through the normal process for hearing inter partes. Following these orders, the Honourable Deputy Registrar directed the applicant to file and serve the application within 7 days, and set a mention date to confirm compliance.
3. On 23rd August 2019, a day after the mention before the Honourable Deputy Registrar, the applicant's counsel wrote to the Honourable Deputy Registrar advising that they shall not be filing the application for stay before this Court and requested to retrieve their application submitted to the registry. The Honourable Deputy Registrar directed the applicants to comply with the procedural steps of filing including payment of the filing fees before they can formally withdraw the application. The matter



is now held in abeyance pending further action by the applicant through his counsel. There is no substantive petition on which the application is hinged or the basis for the intended appeal.

B. Analysis

4. Rule 7E (9) of this Court’s rules provides that pleadings shall be deemed to have been filed with the Court where all the relevant copies of the pleadings have been lodged in the registry and where applicable, the requisite fee has been paid. The applicant lodged the relevant copies at the registry and while the application was admitted, the applicant never sought to be excused and was never exempted from fulfilling the procedural steps including requirement as to the payment of the requisite fee in order to complete the lodging of the application. Since the applicant has also expressed intention to withdraw the application and the application cannot, in the present circumstances, be served upon the respondent, it is only just that the same be struck out for want of compliance with the procedural steps ab initio.

C. Determination

5. We therefore order that the application be struck out in its entirety for being a nullity ab initio. There shall be no order as to costs. Orders accordingly.

DATED and DELIVERED at NAIROBI this 30th Day of April, 2020.

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D. K. MARAGA P. M. MWILU

CHIEF JUSTICE & PRESIDENT DEPUTY CHIEF JUSTICE & VICE

OF THE SUPREME COURT PRESIDENT OF THE SUPREME COURT

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M. K. IBRAHIM S. C. WANJALA

JUSTICE OF THE SUPREME COURT JUSTICE OF THE SUPREME COURT

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I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

