



**Stephen Wanyee Roki v (Miscellaneous Application
26 of 2015) [2017] KESC 22 (KLR) (23 March 2017) (Ruling)**
Stephen Wanyee Roki v K-Rep Bank Limited & 2 others [2017] eKLR
Neutral citation: [2017] KESC 22 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
MISCELLANEOUS APPLICATION 26 OF 2015
JB OJWANG & NS NDUNGU, SCJJ
MARCH 23, 2017**

BETWEEN

STEPHEN WANYEE ROKI APPLICANT

AND

K-REP BANK LIMITED 1ST RESPONDENT

CITY COUNCIL OF NAIROBI 2ND RESPONDENT

DAVID WAWERU 3RD RESPONDENT

The Supreme Court cannot determine an application in a matter that has not been heard on merit by the High Court

Reported by Phoebe Ida Ayaya

Civil practice and procedure - extension of time –application for extension of time to lodge an appeal out of time - application for extension of time within which to file an appeal to the Supreme Court -unfettered discretion of the Court in extending time – factors which the Court ought to take into account before granting extension of time -- whether the application had met the principles set out by the Court in the Peter Ngoge case that the Supreme Court could not hear a matter that had not been heard on merit by the High Court; and a substantive appeal had neither been filed at the Court of Appeal, nor before the Supreme Court-whether the reason by the Applicant that he was indisposed due to the shock of losing the matter at the Court of Appeal was reasonable delay - whether the application had merit.

Brief facts

In an application for extension of time to file a notice of appeal against the Ruling of the Court Appeal delivered on September 25, 2015. In the application, the Applicant contended that the delay occurred after he became indisposed due to the shock of losing the matter at the Court of Appeal. The Respondents contended that the application lacked the threshold for grant of the Orders sought since it arose out of an interlocutory application



and the main suit in the High Court was still pending, and the substantive appeal had never been filed at the Court of Appeal.

Issues

- i. Whether the application had met the principles set out by the Court in the *Peter Ngoge* case that the Supreme Court could not hear a matter that had not been heard on merit by the High Court; and a substantive appeal had neither been filed at the Court of Appeal, nor before the Supreme Court.
- ii. Whether the reason by the applicant that he was indisposed due to the shock of losing the matter at the Court of Appeal was reasonable delay.

Held

1. The application was on a matter that had not been heard on merit by the High Court; and a substantive appeal had neither been filed at the Court of Appeal, nor before the Supreme Court. The principles set out in *Peter Ngoge case* had not been met.

Application dismissed with costs

Citations

Statutes

None referred to

Advocates

None mentioned

RULING

(An application for extension of time to file a notice of appeal under Sections 15 & 16 of the Supreme Court Act, 2011

1. Upon perusing the application dated 15th October 2015 and filed on 21st October 2015 for extension of time to file a notice of appeal against the Ruling of the Court Appeal delivered on 25th September 2015; and
2. Upon reading the affidavit of Stephen Wanyee Roki sworn on the 15th day of October 2017; and
3. Upon considering the written submissions on record for the applicant and the respondent; in which the applicant contends that the delay occurred after he became indisposed due to the shock of losing the matter at the Court of Appeal; the respondents contend that the application lacks the threshold for grant of the Orders sought since it arises out of an interlocutory application and the main suit in the High Court is still pending, and the substantive appeal has never been filed at the Court of Appeal;
4. We Make the following Orders under Section 23(2) of the Supreme Court Act, Rule 31(1) of the Supreme Court Rules:

Orders

5. We dismiss the application with costs.

Reasons

6. The application is on a matter that has not been heard on merit by the High Court; and a substantive appeal has neither been filed at the Court of Appeal, nor before this Court. The principles set out in *Peter Ngoge v. Hon. Francis Ole Kaparo & 5 Others*, Petition 2 of 2012 have not been met.



DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF MARCH, 2017.

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J.B. OJWANG

JUSTICE OF THE SUPREME COURT

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S. N. NDUNGU

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA.

