



REPUBLIC OF KENYA



**Ngoge v Advanced Gaming Limited (Miscellaneous Civil Application
1086 of 2023) [2025] KEHC 9012 (KLR) (Civ) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9012 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION 1086 OF 2023**

JN MULWA, J

JUNE 26, 2025

BETWEEN

GEOFFREY OMWANDO NGOGE APPLICANT

AND

ADVANCED GAMING LIMITED RESPONDENT

(In The Motion Dated 30/08/2024 and Preliminary Objection Dated 22/10/2024)

RULING

1. Before the court for determination is the Motion dated 30/08/2024 brought by the Respondent Advanced Gaming Limited (Hereinafter the Applicant) seeking inter-alia that;
 4. Pending hearing and determination of the intended appeal, the court be pleased to issue an order of stay of execution against the court's ruling delivered on 15/07/2024 and all consequential decrees or orders therefrom;
 5. The Hon. Court be pleased to grant leave to the Respondent to file an appeal against the ruling of the court delivered on 15/07/2024 out of time.
 7. That consequent to the grant of leave and or enlargement of time to file appeal out of time, the Notice of Appeal dated 20/08/2024 be deemed as properly filed.
2. The motion is premised on Section 1A, 1B & 3A 63(e) & 95 of the *Civil Procedure Act*, Order 42 Rule 6 and Order 22 of the Civil Procedure Rules 2010 and the supporting affidavit sworn on 30/08/2024 by one Brian Kyengo Hillary the Managing Director of the Respondent.
3. It is the contention of the deponent that the respondent is exposed to grave irreparable harm that would render its appeal nugatory if the orders sought are not granted adding that its advocates did not



receive the notice of delivery of the ruling on 15/07/2024 and only learnt of the delivery of the ruling on 20/08/2024 upon which the Notice of Appeal dated 20/08/2024 was filed.

4. Further the applicant depones that the respondent would not suffer any prejudice if it is granted leave to appeal out of time and stay granted and that it would be willing to comply with conditions that the court may impose and as a going concern, will be able to settle the final decree should its intended appeal not be successful.
5. In response and opposition to the motion the respondent Geoffrey Omwando Ngoge filed a Notice of Preliminary objection (PO) dated 22/10/2024 based on provisions of Section 62 of the Betting Lotteries and Gaming Act that provides thus: -

“A person aggrieved by a decision of the Board under this Act may within twenty one days of the decision appeal to the High court and a decision of a judge of the High Court shall not be subject of appeal”

Also filed is a replying affidavit sworn on 28/02/2025.

6. Upon the above, the Respondent argues that the intended appeal from the high Court decision is legally prohibited and therefore incompetent, defective, frivolous and an abuse of court process for its failure to adhere to procedural timelines and in breach of Sections 1A and 1B of the Civil Procedure Act and Order 42 Rule 2 Civil Procedure Rules.
7. Both parties have filed submissions on the motion and the preliminary objection. The court has flagged for determination the following issues:-
 - a. Whether the Preliminary Objection dated 22/10/2024 is merited
 - b. Whether the Applicant meets the threshold for grant of leave to appeal out of time and stay of execution pending hearing and determination of the intended appeal.
 - c. Who bears costs of the motion?
8. Section 62 of the Betting Lotteries and Gaming Act (Cap 131) has been quoted verbatim above at paragraph 5 of this ruling. By the above, the applicant ought to have appealed to this court from the Boards decision within 21 days of the decision ie, on or before the 30/10/2023, it failed to do so, and now has moved to this court, (High Court) for leave to file appeal out of time under Section 63 (e) and 95 of the Civil Procedure Act.
9. Meanwhile, on 17/11/2023 the Respondent moved this court under its supervisory powers over Tribunals seeking the adoption of the Tribunals decision as a judgment of the court. The applicant appeared and sought to engage the Respondent on out of court settlement but failed to file any pleadings. As at the return date, 7/03/2024, no pleadings had been filed by the Respondent. The court graciously allowed it more time to engage and or file response if any, and return for hearing of the motion on 7/03/2024, at which time, yet again the Respondent failed to file its pleadings and also failed to attend court. The court left with no alternative adopted the tribunal’s decision as judgment of the court.
10. The above decision of this court by adoption the tribunal’s decision as a judgment of the court for purposes of execution is the subject of the Preliminary Objection, being the first port of call and interaction with the tribunal’s decision and parties.

By dint of Section 62 cited above, a party is prohibited from appealing against the High Court’s decision, as it is final.



11. The court pauses a question here:-

Are the proceedings before the court (High Court) of an appellate nature as envisaged under Section 62 and therefore judgment thereof final?
12. The court agrees with the Respondent in its submissions that this court did not exercise its or any appellate jurisdiction over the decision of the Board to activate the requirement stated at Section 62 from which decision no appeal lies.
13. In the courts considered opinion, the motion before it dated 30/08/2024, does not qualify as appellate proceedings from the Board's decision, but are interlocutory proceedings instituted under Section 1A, 1B and 3A of the Civil Procedure Act the court having not heard the dispute or not rendered any decision on appeal or otherwise.
14. It is trite law that a preliminary objection ought to raise pure points of law which if argued on the assumption that all the facts pleaded by the other side are correct, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.
15. These principles were set out in the case of Mukisa biscuits Manufacturing Company Ltd v. West End Distributors [1969]EA 696 and reiterated in numerous superior Courts decisions inter-alia by the Supreme Court in Ali Joho & Another V Suleiman said Shahbal & 2 Other SCOK petition No. 10 of 2013 [2014] eKLR; First Community Bank Limited v. Cecilia G Miller t/a Miller & Co. Advocates[2021] KEHC 284 (KUR).
16. Having considered the underpinning principles and the earlier motion dated 16/11/2023 and decision rendered on the 15/07/2024, the court finds no merit in the Preliminary Objection. It is dismissed with no orders on costs.

Whether the applicant meets threshold for grant of

 - a. Leave to appeal out of time

The applicant/respondent seeks leave to appeal out of time from this court's decision rendered on 15/07/2024 as clearly stated at prayer 5 of the motion under review.
17. The impugned ruling is clear to all and sundry and is anchored under Article 165(c) of the Constitution on the High Court Supervisory Jurisdiction over Tribunals and all quasi judicial bodies, and in particular Article 167 (d) which empowers the court to call for the records of the Board and make any orders and issue directions appropriate for the fair administration of justice.
18. In the execution of the Boards decision, the decree holder must invoke execution proceedings under the civil Procedure Rules and by so doing by its motion dated 16/11/2023, it sought adoption of the Boards decision as a judgment of the court for purposes of execution.
19. The respondent failed to object to the motion despite several opportunities granted to it.

The court record is clear on this. The court has perused the motion under review and finds no plausible reasons demonstrated upon which the order for leave to file appeal out of time may be granted, particularly in respect of the ruling sought to be appealed from more so that the High Court had no say or decisional making in respect thereof.
20. Looking at the draft Memorandum of Appeal, it becomes more clear that the intended appeal is not against the adoption of the Boards decision delivered on 15/07/2024 as a judgment of the court but is camouflaged as an intended appeal against the decision of the Boards decision made on 9/10/2023



– which as far as this court is concerned has not been appealed from – see par. 9 of the ruling dated 15/07/2024; and if so that information has not been brought to its attention by either party.

21. It must be understood that a court must be moved by a party for orders to be issued. Short of that, unless there are glaring issues on the face of the record, say fraud or illegality it will be craft its issues for determination without involvement of the rival parties.

22. The respondent having failed to raise any objection to the Boards decision being adopted as a judgment of the court for purposes of execution, the respondent cannot now come before the court to raise objections at this stage. As such, the court declines to be dragged in such submissions and declines to grant leave to the Respondent (Advanced Gaming Limited) to appeal against the ruling dated 15/07/2024 out of time.

b. Stay of execution orders pending appeal.

23. This court having determined that the intended appeal is prima facie not against the ruling rendered on 15/07/2024, it would be acting in vain and an academic exercise by granting orders of stay of execution of the orders issued thereof when leave to file the intended appeal has been declined.

24. Orders of stay pending appeal can only be so granted when there is an appeal on record or so if leave to file such appeal has been granted.

Ultimately, stay of execution is also declined.

25. In the end, the motion dated 30/08/2024 is dismissed with costs to the Applicant Geoffrey Omwando Ngoge.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JUNE, 2025.

.....

JANET MULWA

JUDGE

