



**Bhanji & Associates Limited & another v Chaudhry (Commercial Case E095 of 2024)  
[2025] KEHC 12054 (KLR) (Commercial and Tax) (14 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12054 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E095 OF 2024**

**PM MULWA, J**

**AUGUST 14, 2025**

**BETWEEN**

**BHANJI & ASSOCIATES LIMITED ..... 1<sup>ST</sup> APPELLANT**

**MOYEZ SADRUBIN BHANJI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**NADIA FAROK CHAUDHRY ..... RESPONDENT**

**RULING**

1. This ruling is in respect of the Appellants/Applicants' Notices of Motion dated 20<sup>th</sup> May 2024 and 27<sup>th</sup> May 2024, and the Grounds of Opposition dated 29<sup>th</sup> May 2024 filed by the Respondent.
2. The Notice of Motion dated 20<sup>th</sup> May 2024 seeks, inter alia:
  - a. Stay of execution of the judgment delivered on 22<sup>nd</sup> December 2023 by Hon. Gillian Simatwo in Milimani SCCOMM E792 of 2021 - Nadia Farok v Bhanji & Associates Limited & Another;
  - b. An order restraining the Respondent, their auctioneers, agents, servants and/or employees from further proceedings with the proclamation and/or carting away of the attached goods in execution of the decree emanating from the impugned judgment; and
  - c. Costs of the application.
3. The application is supported by the affidavit of Moyez Sadrudin Bhanji, who avers that execution has commenced yet the appeal herein remains undetermined. He states that a prior application for stay was dismissed, but maintains that the appeal is arguable with a high likelihood of success. He contends



- that in the absence of stay orders, the Applicants will suffer substantial loss, and expresses willingness to deposit Kshs. 500,000/- as security.
4. The Notice of Motion dated 27<sup>th</sup> May 2024, brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 51 Rule 1 of the Civil Procedure Rules, and Article 50 of *the Constitution*, seeks orders to enjoin Anfield Auctioneers to these proceedings and to compel them to release to the 2<sup>nd</sup> Appellant/Applicant goods allegedly carried away on 24<sup>th</sup> May 2024 from her mother's premises.
  5. The application is supported by the affidavit of Moyez Sadrudin Bhanji, who deposes that the appeal was filed together with an application for stay, and that on 23<sup>rd</sup> May 2024 the Court issued stay orders. He alleges that attempts to serve the auctioneer were frustrated, as they refused to accept service, and that despite being aware of the court orders, the auctioneers proceeded to cart away goods belonging to the 2<sup>nd</sup> Applicant's mother, aggravating her health condition.
  6. The Respondent opposes both applications vide grounds of opposition dated 29<sup>th</sup> May 2024, terming them frivolous, vexatious, incompetent and an abuse of the court process. It is contended that the issues raised are res judicata, having been canvassed in prior applications in various forums. The Respondent asserts that there is no competent appeal on record, as it was filed 37 days out of time without leave, and that there was non-compliance with earlier court orders regarding timelines, service, and deposit of security. They further argue there is no proof that the goods proclaimed belonged to the 2<sup>nd</sup> Applicant's mother, and that the applications are an afterthought designed to delay execution.
  7. The Applicants filed written submissions dated 22<sup>nd</sup> October 2024. I have considered the same alongside the supporting affidavits, grounds of opposition, and the record.
  8. The issues for determination are:
    - i. Whether the application is res judicata
    - ii. Whether the application is merited
    - iii. Whether Anfield auctioneers should be enjoined as a party to the appeal.
    - iv. Whether the attached goods ought to be released.
  9. Before delving into these substantive issues, the first question for consideration is whether there is a competent appeal before this Court upon which the present applications can be anchored. The Respondent contends that there is no such appeal, the same having been filed outside the time allowed by the Court.
  10. The record reveals that in HCCOMMMISC No. E139 of 2024 – Bhanji & Associates Limited and Moyez Sadrubin Bhanji vs. Nadia Farok Chaudhry and Anfield Auctioneers, the Appellants/Applicants sought, and were granted, leave on 21<sup>st</sup> February 2024 to file a record of appeal within twenty-one (21) days. That period began to run immediately and lapsed on 13<sup>th</sup> March 2024.
  11. It is not in dispute that the present appeal was filed on 17<sup>th</sup> April 2024, more than one month after the leave period had expired. The Appellants have not placed before this Court any evidence of a further application for enlargement of time under Order 50 Rule 6 of the Civil Procedure Rules, nor any order extending the period granted on 21<sup>st</sup> February 2024. There is also no explanation on record for the inordinate delay in lodging the appeal. The applicant argues that the appeal is arguable with a likelihood of success.
  12. Under Section 79G of the *Civil Procedure Act*, every appeal from a subordinate court to the High Court shall be filed within thirty (30) days from the date of the decree or order appealed against, with a proviso



that the Court may admit an appeal out of time if the appellant satisfies the Court that there was good and sufficient cause for the delay. Where a specific leave period is granted by the Court, compliance with that time frame is mandatory, and failure to do so without leave for extension renders the appeal incompetent.

13. It is settled law that where leave is granted to file an appeal within a specified period, strict compliance is mandatory. The timelines form part of the Court's order and cannot be varied unilaterally by a party's action or omission. In the absence of compliance or a valid extension of time, the leave lapses and any appeal filed thereafter is rendered nullity ab initio.
14. The inevitable conclusion is that the present appeal was lodged without the leave of the Court and contrary to the express timelines earlier set. Such an appeal is incompetent and cannot be deemed to be "properly on record." It follows that there is no valid appeal before this Court capable of sustaining the present applications. To proceed otherwise would amount to this Court acting without jurisdiction over a non-existent cause.
15. This position is fortified by established jurisprudence. In *Equity Bank Limited v West Link MBO Limited* [2013] eKLR, the Court of Appeal held that where a pleading is incompetent, "there is in law nothing before the court upon which it can exercise its jurisdiction." Similarly, in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others* [2014] eKLR, the Court emphasized that jurisdiction flows from the law and cannot be assumed where a matter is improperly before the Court.
16. Applying these principles, an appeal filed outside the period permitted, without leave for extension, is nullity ab initio. Any interlocutory applications anchored on such an appeal must also fail.
17. Having found that there is no competent appeal properly on record, it logically follows that the substratum upon which the present applications rest is absent. Without a valid appeal, there is nothing before this Court to be determined on merit, and any further consideration would be an exercise in futility.
18. In the circumstances, the issue of res judicata, though raised by the Respondent, is rendered moot. This Court will not embark on an academic exercise where the substantive dispute no longer exists.
19. Accordingly, the finding that the appeal is incompetent and not properly on record effectively disposes of the applications. There being no competent appeal, the applications collapse under their own weight and are hereby struck out.
20. In the upshot, I make the following orders:
  - i. The appeal filed on 17<sup>th</sup> April 2024 is hereby struck out for being filed out of time without leave of the Court.
  - ii. The Appellants/Applicants' Notices of Motion dated 20<sup>th</sup> May 2024 and 27<sup>th</sup> May 2024 are hereby struck out for want of a competent appeal upon which they could be anchored.
  - iii. Costs of the appeal and the applications are awarded to the Respondent.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 14<sup>TH</sup> DAY OF AUGUST 2025.**

**PETER M. MULWA**

**JUDGE**

In the presence of:



Mr. Sundwa for Appellants  
Mr. Angwenyi for Respondent  
Court Assistant: Godfrey

