



**Al-Rahim Tradin Limited v Makana & 2 others (Civil Appeal
E203 of 2023) [2024] KEHC 504 (KLR) (30 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 504 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E203 OF 2023
RE ABURILI, J
JANUARY 30, 2024**

BETWEEN

AL-RAHIM TRADIN LIMITED APPELLANT

AND

ROBINAS OYARA MAKANA 1ST RESPONDENT

SAADI CARS (K) LIMITED 2ND RESPONDENT

DAVEJAY KANAK T/A JEDS MOTORS LIMITED 3RD RESPONDENT

RULING

1. This Ruling determines the Appellant's/Applicant's application dated 30th November 2023 seeking for stay of execution of decree in Kisumu Small Claims Court Claim No. E222 of 2023, pending hearing and determination of this appeal.
2. The Applicant laments in his grounds of appeal and supporting affidavit that it was never heard before the Small Claims Court.
3. That the appeal has high chances of success as the Motor Vehicle subject of the claim had been sold to a third party who was in its possession as at the time of the accident hence the adjudicator erred in ordering that the Appellant was liable.
4. Although the Applicant's counsel submitted that he had been served with a Replying affidavit, no such affidavit was filed in court to challenge the application on 30th November 2023.
5. Regrettably, the appeal was filed outside thirty days stipulated under section 79G of the [Civil Procedure Act](#) without leave of court.
6. Albeit section 38 of the [Small Claims Court Act](#) on appeals does not stipulate the time within which an appeal from the court to this court lies, it is in such cases that parties are called upon to invoke the



provisions of section 79G of the Civil Procedure Act. This is the position because the Small Claims Court is a subordinate Court to the High Court and considering the strict timelines that the Act establishing the Court has given including time for review under section 41 of the Act, which is 30 days from the date of the decision, it cannot be the case that the Act gave parties who wished to appeal a blank and open cheque and time to choose when to appeal against the decision of the adjudicator.

7. The record herein shows that Memorandum of Appeal dated 30th November 2023 was filed on 30th November 2023.
8. The impugned judgment was rendered on 25th October 2023 and this appeal was lodged simultaneous with the application for stay of execution pending appeal on 30th November, 2023, which was after 30 days of the impugned judgment without any leave of this court being sought to enlarge time within which the appeal ought to have been filed.
9. In the absence of such leave, this appeal is incompetently filed as this court is devoid of any jurisdiction to hear and determine the merits of an appeal filed out of time.
10. Accordingly, the Memorandum of Appeal dated 30th November 2023 together with the Notice of Motion dated on 30th November 2023, are hereby found to be incompetently filed and the same are hereby struck out with no orders as to costs. The applicant is at liberty to file an appropriate application afresh for consideration by the court.
11. This file is hereby closed.
12. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 30TH DAY OF JANUARY, 2024

R. E. ABURILI

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

