



**Vinayak Builders Limited v Bellevue Development Limited & 2 others (Civil Suit 571 of 2011) [2024] KEHC 4833 (KLR) (Commercial and Tax) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4833 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT 571 OF 2011  
PM MULWA, J  
APRIL 25, 2024**

**BETWEEN**

**VINAYAK BUILDERS LIMITED ..... APPLICANT**

**AND**

**BELLEVUE DEVELOPMENT LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**NORMAN MURURU ..... 2<sup>ND</sup> RESPONDENT**

**KENYA COMMERCIAL BANK LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before the court is a Notice of Motion dated 13<sup>th</sup> June 2023 and a Notice of Preliminary Objection dated 26<sup>th</sup> July 2023 which the court directed be canvassed together.
2. In the application by the 1<sup>st</sup> respondent, the applicant sought for orders that the court does order for extension of time to file the 1<sup>st</sup> respondent's books of accounts for a further 45 days.
3. The application was supported by the grounds on the face of it and by the sworn affidavit of Josephat M. Mutugi who stated that in her ruling of 5<sup>th</sup> May 2023, the learned Deputy Registrar ordered the 1<sup>st</sup> respondent to file its books of accounts from year 2011 to 2023 within fourteen (14) days from the date of the ruling and further that the 1<sup>st</sup> respondent's Directors do appear in court for cross-examination on 14<sup>th</sup> June 2023.
4. The 1<sup>st</sup> respondent was keen to comply with the said orders, the stated books of accounts are yet to be finalized by its accountants and auditors, with the latter seeking indulgence for a further 60 days to supply the same due to time constraints, as the months of May and June are accounting periods for most corporates. The 1<sup>st</sup> respondent therefore sought the court's leave to have the timelines extended so as to allow for full compliance with the court's orders.



5. The application was responded to by the respondent/decreed holder vide a replying affidavit dated 26<sup>th</sup> July 2023 and deposed that the application did not meet the threshold for review as it introduced no new evidence that was not available at the time of hearing and neither did it demonstrate any error apparent on the ruling. Further, the application was brought inordinately late and without any reasonable explanation for the delay, and therefore it ought to fail in limine.
6. In the Notice of Preliminary Objection dated 26<sup>th</sup> July 2023, the decreed holder objects on the following grounds;
  - a. The application is bad in law, inadmissible and incurably defective in form and incompetent.
  - b. The applicant's application offends Order 45 Rule 1 of the Civil Procedure Rules on the face of it.
  - c. The application does not introduce any new evidence that was not available to it at the time of hearing.
  - d. The application does not demonstrate any error apparent on the face of the ruling to warrant review.
  - e. The application is brought to court inordinately late without any reasonable or justifiable reason.
7. Having considered the application and the preliminary objection, I frame the following issues for determination;
  - i. whether the PO is merited, and
  - ii. whether the Court should allow an extension of time for filing of the 1<sup>st</sup> respondent's books of accounts
8. The notice of motion application was brought under Section 3A of the [Civil Procedure Act](#) and Order 51 of the Civil Procedure Rules and sought to vary and grant extension for the time within which to comply with ruling of 5<sup>th</sup> May 2023 where the learned Deputy Registrar ordered the 1<sup>st</sup> respondent to file its books of accounts from year 2011 to 2023 within 14 days.
9. In objection and response to the application, the respondent took the position that the application does not meet the threshold for review as it neither introduced new evidence nor demonstrated any error apparent on the ruling. According to the respondent the application is defective in form as it ought to have been brought under Order 45 Rule 1 of the Civil Procedure Rules.
10. Order 51 Rule 10 Civil Procedure Rules provides that:
  - (1) Every order, rule or other statutory provision under or by virtue of which any application is made must ordinarily be stated, but no objection shall be made and no application shall be refused merely by reason of a failure to comply with this rule.
  - (2) No application shall be defeated on a technicality or for want of form that does not affect the substance of the application.”



11. Section 3A of the *Civil Procedure Act* provides;

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

12. The inherent power of the court is a residual intrinsic authority which the court may resort to in order to put right that which would otherwise be an injustice. The extent of inherent powers of the court is clearly illustrated in Halsbury’s Laws of England, 4th Edn. Vol. 37 Para. 14 as follows;

“The jurisdiction of the court which is comprised within the term “inherent” is that which enables it to fulfil itself, properly and effectively, as a court of law. The overriding feature of the inherent jurisdiction of the court is that it is part of procedural law, both civil and criminal, and not part of substantive law; it must be distinguished from the exercise of judicial discretion; it may be exercised even in circumstances governed by rules of court. The inherent jurisdiction of the court enables it to exercise control over process by regulating its proceedings, by preventing the abuse of the process and by compelling the observance of the process...In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them.”

13. In the instant application, the applicant is seeking this Court’s discretion, and extension of time being an act of the exercise of discretion, it must as usual be exercised judicially and under desirable circumstances. The applicant explained that the 1<sup>st</sup> respondent was keen to comply with the said orders; however, the stated books of accounts are yet to be finalized by its accountants and auditors, and therefore the leave sought will allow for full compliance of the court orders.

14. From the foregoing, it is this Court’s finding that the reason for seeking the extension of time is genuine, and that the applicant deserves the exercise of the court’s discretion. The court has a duty to act judiciously in balancing rights and interests of parties before it in order to do justice. It has not been shown that any prejudice will be suffered by the respondent if the compliance period is extended.

15. The upshot is that the Preliminary Objection fails and the Notice of Motion dated 16<sup>th</sup> June 2023 is allowed. In exercise of Court’s discretion to do substantive justice the timeline to comply with the ruling of the learned Deputy Registrar is hereby extended for 45 days from the date herein.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 25<sup>TH</sup> DAY OF APRIL 2024.**

.....

**P. MULWA**

**JUDGE**

**In the presence of:**

Ms. Maritim h/b for Mr. Mtubwa for Decree Holder

N/A for Judgment Debtor



Court Assistant: Carlos

