

**IN THE COURT OF APPEAL  
AT NAKURU**

**(CORAM: MATIVO, JA (IN CHAMBERS))**

**CIVIL APPLICATION NO. NAK E048 OF**

**2021 BETWEEN**

**HANGZHOU AGROCHEMICAL  
INDUSTRIES E.A LIMITED.....APPLICANT**

**AND**

**PANDA FLOWERS LIMITED.....RESPONDENT**

*(An application for leave to reinstate applicant's application of this Court (**Mativo, JA**) dated 30<sup>th</sup> June 2025.*

*in*

***Naivasha High Court Case No.4 of 2017***

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**RULING**

1. The applicant has moved this Court by an application dated 8<sup>th</sup> August 2025, brought under Article 159 (2) of the Constitution, Section 1A, 1B, & 3B of the Civil Procedure Act, Order 51 Rules 1 of the Civil Procedure Rules. The applicant prays for orders that: (a) this Court sets aside of its orders issued on 30<sup>th</sup> June 2025 dismissing its application dated 17<sup>th</sup> August 2021; and, (b) an order reinstating the said application.
2. The application is supported by grounds on its body and the annexed supporting affidavit sworn on 8<sup>th</sup> August 2025

by

Hesbon Owino Opiyo, the applicant's Advocate. The application is premised on the grounds that: (a) the application for leave was listed for hearing on 30<sup>th</sup> June 2025. However, it was dismissed for non-compliance with the Court's directions issued on 25<sup>th</sup> June 2025; (b) the applicant never received the Court's directions issued on 25<sup>th</sup> June 2025; (c) the Court's directions issued on 25<sup>th</sup> June 2025 were sent to Aminga h.aminga@yahoo.com. However, the said e-mail does not belong to the applicant since the applicant has always used the e-mail "hesbonowlno@yahoo.com." as clearly indicated on the application dated 17<sup>th</sup> August 2021; (d) there has not been unreasonable delay in bringing the instant application since the applicant stumbled upon the ruling delivered on 30<sup>th</sup> June 2025 on 7<sup>th</sup> August 2025 during a routine checking of the case on the e-filing system ; (e) the intended appeal is arguable with high chances of success ; (f) the applicant is desirous of prosecuting the appeal on merits and the Court ought to exercise it inherent power in the interest of substantive justice.

3. The application is not opposed.

4. The application is premised on the provisions of the Civil

Procedure Act and Rules which is a misdirection because

proceedings in this Court are governed by the Court of Appeal Rules, 2022 (the Rules) and the Appellate Jurisdiction Act, Cap 9 Laws of Kenya. In support of the application, the firm of Aming'a, Opiyo, Masese & Co. Advocates filed written submissions dated 22<sup>nd</sup> August 2025. Rule 59 which deals with rescinding of orders provides:

***“57 (1) Any order made on an application heard by a single judge may be varied or rescinded by that judge or in the absence of that judge, by any other judge or by the court on the application of any person affected thereby, if -***

***a. The order was one extending the time for doing any act, otherwise than to a specific date; or***

***b. The order was one permitting the doing of some act without specifying the date by which the act was to be done and the person on whose application the order was made has failed to show reasonable diligence in the matter.***

***(2) An order made on an application to the Court may similarly be varied or rescinded by the Court.”***

5. I have considered the applicant’s explanation for the failure to comply with the Court directions issued on 25<sup>th</sup> June 2025. The power of this Court to condone failure to comply with Court’s directions is discretionary. An applicant must provide a sufficient cause for the omission. The judicial discretion is to be guided by a liberal interpretation of the

phrase “*sufficient cause*,” and the need to grant a litigant a fair chance to have his case determined on merit. The Court’s directions requiring

the parties to file submission issued on 25<sup>th</sup> June 2025 were sent to an e-mail that is alien to the applicant, which is “h.aminga@yahoo.com”. I have perused the applicant’s motion dated 17<sup>th</sup> August 2021. I note that the e-mail provided by the applicant is “hesbonowlno@yahoo.com.” and not “h.aminga@yahoo.com”. Therefore, the directions were emailed to the wrong address by the Court. There can be no quarrel with the proposition that a party cannot be made to suffer on account of an act of the Court. There is a well recognised maxim of equity called "*Actus Curiae Neminem Gravabit*" which means that nobody should be allowed to suffer for the fault of the Court. This is a fundamental principal of law. The maxim in simple words means that if any loss is suffered by a litigant due to the negligence of the Court, it becomes the duty of the Court to restore the matter as it would have been before the mistake of the Court. This is because an act of Court shall prejudice no man. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, *lex non cogit ad impossibilia*, which means the law does not compel a man to do what he cannot possibly perform. The law itself and

its administration is understood to disclaim

as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. (See the Supreme Court of India decisions in **Raj Kumar Dey vs.**

**Tarapada Dey [1987 (4) SCC 398].**

6. I am persuaded that it is the act of forwarding the Court's directions on 25<sup>th</sup> June 2025 to the wrong e-mail which resulted in the non-compliance with the directions requiring the applicant to file its written submissions. Therefore, the applicant cannot be penalized for the omission. Consequently, pursuant to Rule 59 (1) (a) of the Court of Appeal Rules, 2022, I allow this application and order as follows:

***a) the orders of this Court issued on 30<sup>th</sup> June 2025 be and are hereby rescinded;***

***b) the application dated 17<sup>th</sup> August 2021 is hereby reinstated to be heard on merits.***

***c) There shall be no order as to costs.***

**Dated and delivered at Nakuru this 15<sup>th</sup> day of December, 2025.**

**J. MATIVO**

.....  
**. JUDGE OF  
APPEAL**

*I certify that this is  
a true copy of the  
original.*

*Signed.*

**DEPUTY REGISTRAR.**