



**Chania Executive Cool Limited v Ahmed & another (Appeal
E002 of 2021) [2022] KECMAT 134 (KLR) (Civ) (14 April 2022) (Ruling)**

Neutral citation: [2022] KECMAT 134 (KLR)

**REPUBLIC OF KENYA
IN THE COMMUNICATION AND MULTIMEDIA APPEALS TRIBUNAL
CIVIL**

APPEAL E002 OF 2021

**ROSEMARY KURIA, CHAIR, COLLINS WANDERI, VIVIENNE ATIENO,
DAMARIS NYABUTI & RAMADHANI ABUBAKAR MUKIRA, MEMBERS**

APRIL 14, 2022

BETWEEN

CHANIA EXECUTIVE COOL LIMITED APPELLANT

AND

SAKINA AHMED CONSUMER

AND

COMMUNICATIONS AUTHORITY OF KENYA RESPONDENT

RULING

1. The Appellant/Applicant has moved this tribunal vide the Notice of Motion dated 17th November 2021 seeking the following orders:
 - a. The Honorable Tribunal be pleased to grant leave to extend the time limited for filing of the Memorandum of Appeal herein;
 - b. spent
 - c. Pending hearing and determination of the substantive appeal, there be a stay of execution of the whole decision/orders of the Communications Authority of Kenya delivered on 15th September 2021 in Consumer Complaint Number 101237676 dated 24th November 2021;
 - d. Corollary to the foregoing, the Memorandum of Appeal filed by the Appellant herein be deemed as properly and duly filed thus part of the record; and
 - e. Costs of this application do abide the result of the said appeal.



2. The Application is based on several grounds but the germane one being that the decision of the honourable commission was informally dispatched to the Appellant/Applicant who only became aware of the contents thereof on 10th November 2021 while preparing for hearing of Mombasa Magistrate's Court Criminal Case Number 1034 of 2020; Republic -vs- Ann Wairimu. The Applicant alleges that the delay in knowing about the impugned decision is what delayed them in filing the Appeal. The Applicant also annexed the Memorandum of Appeal to support its argument on why the appeal is merited and with a high chance of success.
3. Sakina Ahmed, the Consumer herein, filed a Replying Affidavit sworn on 25th January 2022 in opposition to the Application. She deponed that the application was frivolous, vexatious, incompetent, bad in law and an absolute abuse of the court process. She further alleged that the Appellant was duly served with the decision of the Respondent and the same is confirmed in paragraph 13 of the supporting Affidavit.
4. The Respondent, Communications Authority of Kenya also opposed the Application vide its grounds of opposition dated 14th January, 2022. It argued, among other grounds, that the Applicant has not proffered a reasonable explanation as to why it delayed in filing the Appeal.
5. Parties canvassed the Application via written submissions, the same have been considered by the tribunal before rendering this ruling.

Analysis and Determination

6. In a motion such as the one before us, the tribunal's primary concern is whether the Applicant has set out the reasons for the delay and whether these reasons are sufficient to warrant an extension of time in which to file the Appeal.
7. One of the reasons relied upon by the Applicant is that they were never informed of the decision in time as the decision was handed over to an unskilled subordinate staffer even though the Applicant had lawyers on record.
8. These averments were never denied nor controverted. It would have been prudent for the Respondent to render its explanation on the mode of service chosen.
9. It has also not been denied that indeed the firm of Muriithi & Masore Law were on record for the Applicant during the pendency of the matter before the Authority.
10. It has not been explained why the Respondent's decision was not delivered to the counsel on record. Could this have occasioned the delay?
11. Section 102F of the *Kenya Information and Communications Act* provides that for an appeal against the decision of the Authority the same ought to be brought within 60 (sixty) days after the occurrence of the event or the making of the decision.
12. The Authority rendered its decision on 15th September 2021, therefore the Appeal ought to have been filed by 14th November 2021. It has not been shown that parties were aware of the date when the Authority would deliver its decision.
13. Clarity has not been given on who was served. It remains a mystery. But importantly, it has not been explained why the Lawyers to the Applicant were never served or inform of the decision yet it is not in dispute that they had instructions to act in the matter.



14. From the above, we find it easy to reach a finding. We unanimously find in favour of the Applicant and its prayer for extension of time is merited. The Applicant put forth a plausible explanation on the delay. That having instructed a lawyer, they hoped to have gotten information on the decision from him. The service upon the unskilled staffer is found to be improper as there was a counsel on record with full instructions.
15. The Applicant has also sought a prayer of a stay of execution of the decision pending the hearing of the Appeal herein. Having found the Applicant's time to file Appeal will be extended, substantial justice would demand that we also grant stay to avoid the Appeal being rendered nugatory. The Applicant, prima facie, has an arguable appeal from the Memorandum of Appeal on record. We find that not to grant stay at this juncture will cause substantial loss if the Appeal succeeds.
16. That being the case we do order as follows;
 1. Pending hearing and determination of the substantive appeal, there be a stay of execution of the whole decision of the Communications Authority of Kenya delivered on 15th September 2021 in Consumer Complaint Number 101237676 dated 24th November 2020;
 2. The Honorable Tribunal hereby extends the time limited for filing of the Memorandum of Appeal to 14 days from the date hereof.
 3. The Applicant shall file and serve its Memorandum of Appeal within 14 days and all other necessary documents.
 4. The Respondent and Consumer shall have 14 days after service by the Applicant, to file Responses thereon.
 5. Each party to bear its own costs.

It is so ordered.

DELIVERED VIRTUALLY IN THE PRESENCE OF THE HONOURABLE MEMBERS OF THIS TRIBUNAL, COLLINS WANDERI, VIVIENNE ATIENO, DAMARIS NYABUTI AND RAMADHANI ABUBAKAR MUKIRA

In the presence of:-

Masore for the Applicant

Mokua holding brief for Omwenga for the Consumer

No appearance for the Respondent

C/A Joy Kendi

DATED THIS 14TH DAY OF APRIL 2022

ROSEMARY KURIA

CHAIRPERSON

COMMUNICATIONS & MULTIMEDIA APPEALS TRIBUNAL

