



Uneco Paper Product Limited v Mutete t/a Mutete John & Company Advocates (Civil Appeal E271 of 2024) [2024] KEHC 16208 (KLR) (Commercial and Tax) (20 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16208 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E271 OF 2024
FG MUGAMBI, J
DECEMBER 20, 2024**

BETWEEN

UNEECO PAPER PRODUCT LIMITED APPLICANT

AND

**ROSE MUTETE T/A MUTETE JOHN & COMPANY
ADVOCATES RESPONDENT**

RULING

Background and introduction

1. This ruling determines the application dated 17th September 2024. It is brought under the provisions of Order 9, Rule 9 and 10 and Order 50 Rule 6 of the Civil Procedure Rules, Section 7 of the *Appellate Jurisdiction Act*, and Section 3A and 95 of the *Civil Procedure Act*.
2. The application seeks the following substantive prayers:
 - i. Spent.
 - ii. That the Applicant be granted leave to appeal out of time against the ruling delivered on the 15th of August 2024 in Small Claims Court Case No. E3722 of 2024.
 - iii. That the Annexed Memorandum of Appeal be deemed as duly filled upon payment of the requisite filing fees.
 - iv. That the costs of this application be provided for.
3. The applicant contends that the failure to file the appeal within the stipulated timelines was as a result of the delay in receiving the signed ruling from the registry. The applicant further contends that this delay was beyond their control and their legal representatives. It is their case that the application for



leave to appeal out of time is being made only one day late outside the stipulated mandatory period, with the court's ruling having been delivered on 15th August 2024 and this application being filed on 17th September 2024.

4. The application is opposed by way of a grounds of opposition dated 24th September 2024. The respondent contends amongst others that the applicant has not satisfied the conditions for grant of the orders sought neither has she demonstrated the prejudice she stands to suffer in the absence of issuance of the orders sought.
5. Both parties filed their respective skeleton submissions which I have carefully considered, alongside the pleadings, submissions, evidence and case law cited by parties.

Analysis and Determination

6. In addition to the legal provisions cited in the application, a party seeking an extension of time must demonstrate that their application aligns with the parameters established by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat V The Independent Electoral and Boundaries Commission & 7 Others*, [2014] eKLR. The Supreme Court outlined the following guiding principles:
 - i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
 - ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court
 - iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 - iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 - v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - vi. Whether the application has been brought without undue delay;
 - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
 - viii. The degree of prejudice to the respondent if the application is granted
7. The evidence placed before me shows that indeed, the impugned Ruling was delivered on 15th August 2024. The applicant wrote to the Deputy Registrar on 16th August 2024, a day after this, requesting for the typed Ruling of the Learned Adjudicator. However, what remains unclear is what further steps, if any, were taken by the applicant after sending this letter, as well as the exact date on which the typed Ruling was availed to the parties.
8. That notwithstanding, I have reviewed the Memorandum of Appeal annexed to the application. I agree with the applicant that it raises pertinent issues for determination, including whether the Small Claims Court has jurisdiction over matters involving the taxation of advocate/client costs, under Section 12 of the *Small Claims Court Act*.
9. I further note that the respondent has not denied that the delay in filing this application was minimal as it was filed one (1) day after the 30 days provided for in law. In any case, no prejudice will be occasioned to the respondents as they will get an opportunity to respond to the substantive issues raised in the substantive appeal.



Disposition

10. Accordingly, I allow the application dated 17th September 2024. The costs of the application shall await the outcome of the appeal.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 20TH DAY OF DECEMBER 2024.

F. MUGAMBI

JUDGE

