



**Peter O. Ngoge t/a O.P. Ngoge & Associates v Kenya Koch Light Industries Limited & another (Environment and Land Miscellaneous Case 3 of 2020) [2025] KEELC 5187 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5187 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND MISCELLANEOUS CASE 3 OF 2020  
A OMBWAYO, J  
JULY 10, 2025**

**BETWEEN**

**PETER O. NGOGE T/A O.P. NGOGE & ASSOCIATES ..... APPLICANT**

**AND**

**KENYA KOCH LIGHT INDUSTRIES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**REKHAVANTI PANKAJ SHAH ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**DIVISION - Brief Facts**

1. The Applicant filed the instant application dated 24th April, 2025 seeking the following orders:
  1. Spent.
  2. That time be enlarged for the Applicant herein to apply for leave to challenge the ruling delivered by Hon Mr. Justice Ombwayo herein on the 6th March, 2025 in the Court of Appeal.
  3. That leave be granted to the Applicant to challenge the Ruling delivered herein by Hon Mr. Justice Ombwayo herein on the 6th March, 2025 in the Court of Appeal.
  4. That the Notice of Appeal dated 10th March, 2025 be deemed as having been duly filed and served upon the Respondents herein.
  5. That the costs of this Application do abide the outcome of the Applicant's intended appeal.
2. The Application is based on grounds set out and supported by the Affidavit of PETER O. NGOGE the Applicant herein sworn on 24th April, 2022. He stated that as a result of an oversight on his part, he filed and served the Notice of Appeal dated 10th March, 2025 without having sought leave of this court. He further stated that he sought to challenge the ruling delivered on 6th March, 2025



as the intended appeal was not a sham. He also stated that the length of time the subject matter in the taxation proceedings took before the final determination was not a legal basis for assessment of Advocates Instructions fees.

3. He stated that the Deputy Registrar discriminated against him thus curtailing his socio-economic rights through refusal to assess his instruction fees based on the value of the subject matter. He added that the said value of the subject matter was ascertainable from the materials of record he supplied. He urged the court to allow his application as prayed.

### **Response**

4. The 1st Respondent filed its Replying Affidavit sworn on 8th May, 2025 by its General Manager, Faith Wambui. She averred that pursuant to paragraph 11(3) of the Advocates (Remuneration) Orders, an individual dissatisfied with a Judge's decision on objection to a taxation ruling must seek leave of the Judge before appealing to the Court of Appeal.
5. She further averred that the Applicant's request to have the prematurely filed Notice of Appeal deemed as duly filed and served was ill founded and would amount to the court entertaining an irregular process. She also averred that an application for leave to appeal ought to be filed within 14 days from the date of the decision sought to be appealed.
6. She added that the ruling was delivered on 6th March, 2025 but the present application having been filed on 24th April, 2025 was lodged outside the prescribed 14-day period thus in contravention of the law.
7. She also averred that there was no sufficient reason provided by the Applicant for the delay. She added that the Applicant's failure to adhere to the mandatory procedural requirements cannot be excused on the basis of counsel's oversight or ignorance. She urged the court to dismiss the application.

### **Analysis and Determination**

8. This court has carefully considered the application and the main issue for determination is whether the Applicant should be granted leave to file appeal out of time.
9. Rule 75 of the Court of Appeal Rules provides as follows;
  1. Any person who desires to appeal to the court shall give notice in writing, which shall be lodged in duplicate with the Registrar of the Superior Court.
  2. Every such notice shall, subject to rules 84 and 97, be so lodged within fourteen days of the date of the decision against which it is desired to appeal."
10. In the instant case, it is not in dispute that this court delivered its decision on 6th March, 2025. It is trite law that the Applicant had 14 days within which it was to file an appeal. It is not in dispute that the Applicant without leave of the court filed a Notice of Appeal dated 10th March, 2025. The Applicant has now come to court seeking extension of time to file appeal. The 1st Respondent on the other hand contends that the application was filed outside the stipulated time of 14 days hence it should not be allowed.
11. It is worthwhile to note that this court has the discretion to extend time which ought to be exercised within the principles of the law. In the case of *Nicholas Kiptoo Arap Korir Salat V Independent Electoral and Boundaries Commission & 7 others* [2014] KECA 782 (KLR) the court held as follows:



1. 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;
  2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court.
  3. Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
  4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
  5. Whether there will be any prejudice to be suffered by the respondents if the extension is granted;
  6. Whether the application has been brought without undue delay; and
  7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
12. Further, in the case of Nyamboki V *Gathuru (Application 6 of 2019)* [2019] KESC 44 (KLR) the court held that:

“..., the Court has to consider whether the explanation given for any delay is reasonable and credible; whether there also exist extenuating circumstances to enable the Court exercise its unfettered jurisdiction; and that the delay, in any event, should not be so inordinate as to leave no doubt, that an applicant has been slothful, and filed such an application as an after-thought.”

13. From the above provisions of the law, it is clear that if the Applicant desired to prefer an appeal to the Court of Appeal, they ought to have done so within fourteen days from 6th March, 2025 which lapsed on 20th March, 2025. It is my opinion that this court having power to grant leave to the Applicant to file notice of appeal out time, no sufficient cause has been given for the delay which in my view is inordinate. In addition, the Applicant has also not given security for the due performance as may be ultimately be binding on him.
14. It is trite that this court has power to enlarge time but, in the absence, of reasonable explanation as to the delay, this court finds that the Applicant is not deserving of this courts exercise of discretion in his favour.
15. Consequently, the application for orders of extension of time fails in its entirety.

It is so ordered.

**SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO.**

**THE JUDICIARY OF KENYA.**

**NAKURU ENVIRONMENT AND LAND COURT ENVIRONMENT AND LAND COURT.**

**DATE: 2025-07-10 16:17:34**

The Judiciary of Kenya\*

