



REPUBLIC OF KENYA



Rana Auto Selection Limited v Commissioner of Domestic Taxes (Miscellaneous Application E224 of 2024) [2025] KEHC 422 (KLR) (Commercial and Tax) (20 January 2025) (Ruling)

Neutral citation: [2025] KEHC 422 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E224 OF 2024**

**A MABEYA, J
JANUARY 20, 2025**

BETWEEN

RANA AUTO SELECTION LIMITED APPELLANT

AND

COMMISSIONER OF DOMESTIC TAXES RESPONDENT

RULING

1. This ruling determines the application dated 13/3/2024 by the appellant. The same was brought under Article 159 of the *Constitution of Kenya*, sections 3A and 79G of the *Civil Procedure Act* and order 51 rule 1 of the *Civil Procedure Rules*.
2. It sought leave to file an appeal out of time against the judgment of the Tax Appeals Tribunal (“the Tribunal”) delivered on 12/4/2021 and that the annexed memorandum of appeal be deemed as properly filed.
3. The application was supported by the grounds on the face of the Motion and the affidavit Khan Sultan Ali of even date. It was the applicant’s case that the Tribunal delivered its judgment on 12/4/2021 dismissing the applicant’s appeals. That being dissatisfied therewith, the appellant filed a notice of appeal immediately on 12/4/2021 and further filed an application for stay of execution on 13/4/2021.
4. That a ruling was delivered on 11/5/2021 and the applicant was directed to file a memorandum of appeal within 14 days from the date of the ruling. That before the memorandum of appeal was filed, the appellant changed counsel and the new counsel filed a memorandum of appeal on 10/8/2021 way out of the time frame ordered by the Court.
5. That the appeal was struck out for being filed out of time without leave of Court in a ruling dated 30/6/2023. That failure to file the appeal within the timelines was the mistake of Counsel which



- should not be visited on the client. Further that, the matter had been in Court during that time and the reason for the delay was failure to apply the correct procedure rather than laches. It was stated that the appellant was still engaging the respondent for ADR with a view to amicably settle the dispute.
6. The application was opposed by the respondent vide a replying affidavit sworn by Sheila Mary Odawa on 7/5/2024. It was contended that the decision of the Tribunal was delivered three years ago which delay was inordinate. That appellant had not provided reasonable grounds for the delay in filing the appeal. It was contended that the applicant had failed to honour the corporation tax as set out in the ADR agreement and further did not deposit 50% security as directed by the Court in its ruling dated 11/5/2021 in Milimani E150 of 2021.
 7. The application was canvassed by way of written submissions which I have considered. The applicant submitted that once a matter has been struck out, the same can be reinstated after rectification of the error. It was submitted that the delay by Counsel was attributed to the complexity of the matter as it emanated from four appeals. The applicant submitted that mistake of Counsel should not be visited on the client.
 8. The respondent submitted that the applicant's appeal was struck out on 30/6/2023 while the present application was brought 7 months later. That the applicant did not give reasons for the inordinate delay and was therefore guilty of laches. It was further submitted that the applicant had been directed by the Court to deposit security of Kshs. 20,000,000/- pending appeal at the Court of Appeal and the same was not honoured. That if the application is allowed, the applicant should be directed to pay a deposit of 50% of the taxes due with the respondent.
 9. I have considered the application and the responses filed thereto as well as the submissions by Counsel. The application sought leave to file an appeal out of time.
 10. Rule 3 of the [*Tax Appeals Tribunal \(Appeal to the High court rules*, 2015\)](#) provides that: -

“The appellant shall, within thirty days, after the date of service of a notice of appeal under section 32(1), file a memorandum of appeal with the registrar and serve a copy on the Respondent...”
 11. Rule 4 of the [*Rules*](#) provides: -

“The Court may extend the time specified in rule 3 if the Court is satisfied that owing to absence from Kenya, sickness, or other reasonable cause, the appellant was unable to file the memorandum of appeal within the period and that there has been no unreasonable delay on the part of the appellant”.
 12. The Supreme Court of Kenya has set the parameters within which the courts have to apply when faced with an application for extension of time in [*Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others*](#), [2014] eKLR which include: -
 - 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.
13. The Tribunal delivered its judgment on 12/4/2021, dismissing the consolidated appeals. Dissatisfied with the decision, the applicant filed an application on 13/4/2021 seeking a stay of execution. In a ruling dated 11/5/2021, the applicant was directed to file a memorandum of appeal within 14 days from the date of the ruling. However, the applicant filed the memorandum of appeal outside the 14-day period, and as a result, on 30/6/2023, the appeal was struck out for failure to seek leave to file the memorandum outside the prescribed time.
14. Now, the applicant has filed the current application on 13/4/2024, seeking leave to file the memorandum of appeal out of time. The same was being filed nearly 10 months after the appeal was struck out. The applicant has not provided any reasons for the delay in filing the application immediately after the appeal was struck out.
15. The applicant's focus in the application is on why the appeal was not filed within the timelines set by the Court in its ruling dated 11/5/2021, but has not sufficiently explained why it did not seek leave to file the appeal out of time at the earliest opportunity after the appeal was struck out.
16. The court observes that once the appeal was struck out, all documents filed with the appeal, including the memorandum of appeal and the notice of appeal, were also struck out. The applicant should have applied for leave to file both the memorandum of appeal and the notice of appeal out of time. The failure to seek such leave renders the application fatally defective.
17. The judgment in favor of the respondent was given four years ago and the respondent continues to be prejudiced by the applicant's inaction. The Court notes that the applicant has failed to demonstrate good cause for the delay and has not provided sufficient grounds to justify invoking the court's discretion for an extension of time. In any event, it failed to deposit the amount directed by the Court.
18. In light of the above, the Court finds that the application lacks merit and is dismissed with costs.

It is so ordered.

SIGNED AT NAIROBI THIS 20TH DAY OF JANUARY, 2025.

A. MABEYA, FCI ARB

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JANUARY, 2025.

F. GIKONYO

JUDGE

