



Stichting Rabobank Foundation v Ava Chem Limited & another (Commercial Case E374 of 2022) [2025] KEHC 160 (KLR) (Commercial and Tax) (20 January 2025) (Ruling)

Neutral citation: [2025] KEHC 160 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E374 OF 2022
JWW MONG'ARE, J
JANUARY 20, 2025**

BETWEEN

STICHTING RABOBANK FOUNDATION APPLICANT

AND

AVA CHEM LIMITED 1ST RESPONDENT

CHRISTOPHER IRUNGU MWANGI 2ND RESPONDENT

RULING

1. What is before this Honourable Court is the Plaintiff's Application dated 24th September 2024 seeking that the court do extend the time for filing and serving its Notice of Appeal and allow it to file an appeal to challenge the ruling of this court issued on 24th July 2024. The Application which was filed under Section of the *Appellate Jurisdiction Act*, Chapter 9 laws of Kenya is supported by the grounds set on its face and the supporting affidavit of Lidwien Schils. It is opposed and the Respondents have filed a replying affidavit sworn by Christopher Irungu Mwangi on 1st October 2024.
2. The Applicant argues that the delay in filing an appeal against the ruling was occasioned by its former Advocates M/S Tito & Associates Advocates failure to file the Notice of Appeal within the prescribed timelines by law. That upon instructing its current Advocates, M/S Hamilton Harrison & Matthews Advocates, the Applicant realized that the ruling having been delivered on 25th July 2024 the request for typed proceedings and the Notice of the intended appeal ought to have been issued within 30 days of the same, being the 24th August 2024 but was instead issued on 28th August 2024 by its previous Advocates.
3. The Applicant further argues that the application has not been made with inordinate delay and that no prejudice will be suffered by the Respondents if it is allowed to file its appeal. The Applicant believes that it has an arguable appeal with prospects of success.



4. The Respondents oppose the Application. The Respondents argue that there is no valid or legitimate reason advanced by the Applicant as to why the Notice of the intended appeal was not filed in a timely fashion. They argue that the present advocates waited for over 30 days before moving the court with the present application for leave to file the intended appeal and that if the application is allowed, they stand to suffer prejudice.
5. Section 7 of the [Appellate Jurisdiction Act](#) provides as follows:-

“The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already.”
6. I note from the record that this court issued its ruling that the Applicant seeks to appeal from on 25th July 2024 and that the Applicant through its previous advocates and on 22nd August 2024 filed a Notice of Appeal challenging the whole of the decision of the court. On 28th August 2024 the Applicant then wrote to the court requesting for typed proceedings pursuant to rule 84 of the Court of Appeal Rules. Unfortunately, the said letter and notice was not served or copied to the Defendants or their Advocates as is required by law. Those lapses have since been rectified by the present advocates for the Applicant.
7. I have carefully considered both arguments as put forward by the parties. In arriving at a decision herein I am guided by the principles set out under Article 159(2) (d) of [the Constitution](#) that provides as follows; “(d)justice shall be administered without undue regard to procedural technicalities.
8. I note the timelines set out for filing an appeal against a decision of a court are not mere procedural technicalities but are necessary for management of cases by courts and also help to bring certainty in cases. However, in the present application before this court I am persuaded that the application was not brought with inordinate delay and allowing the same will not inadvertently prejudice the Respondents. Subsequently, I find that the application has merit and I allow the same. I direct that each party bear their costs of the application. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF JANUARY 2025

J.W.W. MONG'ARE

JUDGE

In the Presence of:-

Mr. Andiwo for the Applicants.

Mr. Muriungi for the Respondents.

Amos - Court Assistant

