



**UAP Insurance Company Limited v Ramadhan (Civil Appeal
E103 of 2023) [2025] KEHC 1942 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1942 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E103 OF 2023
J NGAAH, J
FEBRUARY 14, 2025**

BETWEEN

UAP INSURANCE COMPANY LIMITED APPELLANT

AND

ABEID RAMADHAN RESPONDENT

RULING

1. The application before court is a motion dated 8 April 2024 filed under Section 1A, 1B and 3A, 80 of the *Civil Procedure Act*, cap. 21 and Orders 12 (7), 45 and 51 rule 1 of the Civil Procedure Rules. The applicant seeks the following orders:
 1. That the Honourable Court be pleased to review and set aside the Order issued on 3rd April, 2024 dismissing the Applicant's appeal and marking the matter as closed and the Applicant's appeal be reinstated for hearing forthwith.
 2. That the appeal once reinstated, the court be pleased to order that the appeal be disposed of by way of written submissions within the shortest time possible;
 3. That costs of this application be in the cause.”
2. The application is supported by the affidavit of Susan Monari who has sworn that on 3 April 2024, the applicant's appeal was listed for mention before Magare, J. The mention was on a virtual platform and because of what the deponent has described as a “technical hitch” the applicant's counsel could not join the platform and participate in the proceedings on the material day.
3. The learned counsel for the applicant later discovered that in the course of the court proceedings of 3 April 2024, the appeal was dismissed and the file marked as closed.
4. According Ms. Monari, the appeal was mistakenly dismissed for the reason that it had been filed out of time yet the applicant had been granted leave to file the appeal out of time. This leave was granted in



High Court Miscellaneous Application No. E099 OF 2023. The applicant, thus, asks this Honourable Court to review its order as there is an error apparent on the face of the record.

No response was filed against the application.

5. Indeed, as the applicant says, the record shows that the applicant's appeal was set for mention for directions on 3 April 2024. The appeal was placed before Magare, J. and the record of the proceedings on the material date have been captured as follows:

“03/04/2024

Before Hon. Justice Magare Kizito

C/A: Norah

Ms. Mohammed for the respondent

N/A for the appellant

Signed

3/4/2024

Court: Directions for admission shortly

Signed

3/4/2024

Court: This decision was made on 22/12/22. The appeal was filed on 3/5/2024 using a memorandum of appeal dated 3/5/2023. The same was filed out of time without leave. The appeal is therefore rejected or summarily dismissed. Each party to bear their own costs. This file is closed.

Signed

Judge

3/4/2024.”

6. But the record in this Honourable Court's Miscellaneous Application No. E099 of 2023 shows that by an application dated 28 March 2023, the applicant sought for and successfully obtained leave to file the appeal in question out of time.
7. The application was before Magare, J. on 2 May 2023 and in granting the order, the judge ordered, inter alia, as follows:
1. Leave is granted to the applicant to file an appeal out of time from the ruling of the Honourable David O Mbeja, given on 22nd December, 2022 in Mombasa CMCC 256 of 2022;
 2.
 3. The memorandum of Appeal be filed within 14 days.
 4. The applicant herein to place the matter before court together with order appealed from directions.
 5.
 6. This file is closed.”



8. The Case tracking system shows that the memorandum of appeal was filed on 6 May 2023 which was well within time by which the period for filing of the appeal had been extended.
9. What appears to have transpired, and the applicant has admitted as much, is that when the appeal was eventually filed, the applicant did not include, in the appeal record, the order granting leave for extension of time and, therefore, in dismissing the appeal summarily, the court proceeded on the assumption that the appeal had been filed out of time without leave. This was an error apparent on the face of the record for which the applicant is entitled to a review under Order 45 of the Civil Procedure Rules. This order reads as follows:
Order 45. 1. (1) Any person considering himself aggrieved—
 - a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
10. Without belabouring the point, I am satisfied that the applicant's application is merited. It is hereby allowed to the extent that the order dismissing the appeal summarily is set aside. The appeal is admitted for hearing and directions on the manner of its disposal shall be taken on 11 March 2025. I make no order as to costs. I direct the appellant to serve the mention notice on the respondent. It is so ordered.

SIGNED, DATED AND DELIVERED ON 14 FEBRUARY 2025

NGAAH JAIRUS

JUDGE

