



**Zebra Tracks Insurance Brokers Limited v Monarch Insurance
Company Ltd (Miscellaneous Application E294 of 2024)
[2025] KEHC 3119 (KLR) (Commercial and Tax) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3119 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E294 OF 2024
PM MULWA, J
MARCH 13, 2025**

BETWEEN

ZEBRA TRACKS INSURANCE BROKERS LIMITED APPLICANT

AND

THE MONARCH INSURANCE COMPANY LTD RESPONDENT

RULING

1. The Applicant herein Zebra Tracks Insurance Brokers Ltd filed the Notice of Motion Application dated 26th March 2024 seeking the following orders:
 - a. Spent...
 - b. That this court be pleased to extend time for filing a Notice of Appeal and Memorandum of Appeal against the Decree arising from the judgment in MCOMMSU E1261 of 2021 - The Monarch Insurance Company Ltd vs Zebra Tracks Insurance Brokers Ltd.
 - c. That this Honourable court be pleased to grant leave to the Applicant to file the notice of appeal and Memorandum of Appeal.
 - d. Spent...
 - e. That pending the hearing of the intended appeal there be a stay of execution of the decree arising from the judgement in MCOMMSU E1261 of 2021
 - f. That the costs of and incidental abide with the result of the appeal.
2. The application is opposed through a replying affidavit sworn by Jackline Kiberenge on 2nd may 2024 and the notice of Preliminary Objection dated 24th July 2024, on the grounds that the instant



application is misconceived, incompetent and bad in law as there is no substantive appeal filed, that the applicant is yet to file a Memorandum of appeal. Jackline avers that the Applicant's counsel failed to attend court on 14th December 2023 when judgment was delivered. She avers that no evidence has been adduced to demonstrate the efforts made by counsel in an attempt to get the copy of judgment. She further avers that a copy of the judgment and the Decree was served in the applicant's advocate on 26th January 2024 demanding them to settle the decree but it elicited no response.

3. According to the Respondent, on 5th February 2024 the Applicant's advocate was served with a garnishee application to attach the client's monies held in Equity Bank but failed to respond to the same. That the applicant is undeserving of the orders sought as it was aware of the outcome of the judgment but failed to take necessary action.
4. The application was argued by way of written submissions.

Analysis and determination

5. I have considered the application, affidavits and submissions by both counsel for parties. There is no dispute that judgment was entered on 14th December 2023.
6. In support of the application, the Applicant has claimed that it encountered challenges in obtaining a copy of the judgment from the registry considering it was during the Christmas vacation. And again, it took long before receiving instructions from the client.
7. This court is being called upon to exercise its discretion to extend time for filing a Notice of appeal and the Memorandum of appeal.
8. Order 42 of the Civil Procedure Rules governs filing and prosecution of appeals. Rule 1 thereof provides that every appeal to the High Court shall be in the form of a memorandum of appeal signed in the same manner as a pleading. An appeal to this court is not commenced by way of a notice of appeal. That is a process applicable in filing of appeals from the High Court to the Court of Appeal.
9. Section 79G of the *Civil Procedure Act* states:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery of a copy of the decree or order.

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”
10. In the case of *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* (Civil Application No. Nairobi 255 of 1997) (UR) the Court of Appeal stated this in regard to exercise of the discretion of extending time.

“It is now well settled that the decision whether or not to extend time for appealing is essentially discretionary. It is also well settled that in general, the matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of time of delay, secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted, and fourthly the degree of prejudice to the Respondent if the application is granted.”
11. It is trite law that the party seeking an extension of time, must satisfy the court that they have good and sufficient cause for filing the appeal out of time.



12. In the instant case judgment was delivered on 14th December 2023, while the current application was filed on 26th March 2024. This is a period of over 3 months. I am not persuaded that the reasons adduced for the delay are sufficient.
13. In *Esther Anyango Ochieng v Tramara Sugar Company Ltd (2020) eKLR*, the court held that;

“We have said on numerous occasions that Rules of the court exist for the purpose of orderly administration of justice...The timelines for doing certain things and taking certain steps are indispensable to the proper adjudication of appeals before us. The rules are expressed in clear and unambiguous terms and they command obedience.”
14. As a consequence, I find the application dated 26th March 2024 lacking in merit and dismiss the same with costs.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF MARCH 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Maranga for Applicant

Mr. Owiti for Respondent

Court Assistant: Carlos

