



**Commissioner of Investigations and Enforcement v Samar
Construction Limited (Miscellaneous Application E614 of 2024)
[2025] KEHC 6745 (KLR) (Commercial and Tax) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6745 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E614 OF 2024**

PM MULWA, J

MAY 22, 2025

BETWEEN

COMMISSIONER OF INVESTIGATIONS AND ENFORCEMENT APPELLANT

AND

SAMAR CONSTRUCTION LIMITED RESPONDENT

RULING

1. This ruling is in respect of the Appellant’s Notice of Motion application dated 31st July 2024, seeking extension of time to file a Memorandum of Appeal against the judgment of the Tax Appeals Tribunal.
2. The application is premised on the grounds that while the Appellant did file a Notice of Appeal within the prescribed timelines, the Memorandum of Appeal was not filed in time due to the illness of its counsel on record. It is argued that this lapse should not be visited upon the client, that the intended appeal raises arguable issues, and that no prejudice will be suffered by the Respondent if the extension is granted.
3. The application is opposed by the Respondent through grounds of opposition dated 31st October 2024. The Respondent contends that the appeal is fundamentally unmeritorious and procedurally flawed. It is stated that the Appellant failed to issue a decision on the Respondent’s objection within the prescribed 60-day period under Section 51(11) of the *Tax Procedures Act*, thereby rendering any appeal fatally defective. The Respondent further submits that the delay in filing the Memorandum of Appeal is inordinate and inexcusable, particularly given the Appellant’s institutional capacity to make alternative arrangements.



Determination

4. Upon consideration of the application before this Court, the supporting affidavit, and the grounds of opposition, it is evident that the Respondent has lodged an appeal before the Tax Appeals Tribunal. The judgment delivered by the Tribunal on 8th March 2024 has triggered the Applicant's intent to further appeal before this Court.
5. The timelines for filing an appeal to the High Court are clearly set out in Rule 3 of the [Tax Appeals Tribunal \(Appeals to the High Court\) Rules, 2015](#), which provides:

“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.”
6. Additionally, Section 53 of the [Tax Procedures Act, 2015](#) reinforces this requirement in the following terms:

“A party to proceedings before the tribunal who is dissatisfied with the decision of the tribunal in relation to an appealable decision may, within thirty days of being notified of the decision or within such further period as the High Court may allow, appeal the decision to the High Court in accordance with the provisions of the [Tax Appeals Tribunal Act, 2013](#) (No. 40 of 2013).”
7. However, Rule 4 of the [Rules](#), as mentioned above, grants the Court discretion to extend time upon satisfaction that:

“...owing to absence from Kenya, sickness, or other reasonable cause, the appellant was unable to file the memorandum of appeal within that period and that there has been no unreasonable delay on the part of the appellant.”
8. The discretion to extend time is a judicial one, to be exercised judiciously and based on established principles. In [Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others](#) [2014] eKLR, the Supreme Court outlined the guiding principles, including:
 - i. Extension of time is not a right of a party.
 - ii. A party seeking extension must lay a basis to the satisfaction of the court.
 - iii. The discretion is to be exercised on a case-by-case basis.
 - iv. The court must consider the length of the delay, the reason for the delay, the degree of prejudice, whether the matter is arguable, and whether the respondent can be adequately compensated by costs.
9. In the present case, the delay has been attributed to illness on the part of counsel for the Applicant. While no medical evidence was annexed, the explanation is not, on its face, implausible or contrived. The Court is mindful of the holding in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231, where it was stated that the Court's discretion in such matters is unfettered, provided that the applicant offers a reasonable explanation.
10. The delay, though unfortunate, has not been shown to be so inordinate as to cause irreparable prejudice to the Respondent. Moreover, the Respondent has not demonstrated that it has suffered prejudice that



cannot be compensated by an award of costs. As held in *First American Bank of Kenya Ltd v Gulab P Shab & Others*, Nairobi HCCC No. 2255 of 2000, the paramount consideration is to do justice to the parties.

11. As regards the arguability of the intended appeal, the Court is not required at this stage to determine the likelihood of success, but merely whether the appeal raises a legitimate issue for judicial consideration. The question as to whether the Appellant's delay in responding to the Commissioner's objection decision under the *Tax Procedures Act* extinguished its right of appeal is a triable issue. In *Kenya Commercial Bank Ltd v Nicholas Ombija* [2009] eKLR, the Court affirmed that even a single bona fide arguable ground suffices to justify leave.
12. While the Respondent has raised the issue of procedural defect under Section 51(11) of the *Tax Procedures Act*, this is a matter to be considered by the appellate court substantively and not one that can be conclusively determined at this interlocutory stage.
13. Given the foregoing, I am satisfied that the Applicant has established sufficient cause for the delay and that the intended appeal raises arguable issues. The discretion of the Court is therefore properly and judiciously invoked. The upshot is that the Notice of Motion application dated 31st July 2024, is merited and I allow the same on the following terms:
 - a. The Appellant is granted leave to file the Memorandum of Appeal out of time.
 - b. The Memorandum of Appeal shall be filed and served within 7 days from the date of this ruling.
 - c. Costs of this application shall be in the appeal.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 22ND DAY OF MAY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Muhoro h/b for Ms. Moraa for Appellant

Ms. Chumo h/b for Muciimi for Respondent

Court Assistant: Carlos

