



REPUBLIC OF KENYA



KENYA LAW
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**Karisa v Motrex Limited (Civil Appeal 45 of 2022)
[2025] KEHC 5936 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5936 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL 45 OF 2022**

M THANDE, J

MAY 9, 2025

BETWEEN

DANIEL RAMADHAN KARISA APPELLANT

AND

MOTREX LIMITED RESPONDENT

RULING

1. By a Notice of Motion dated 18.1.24, the Respondent/Applicant seeks the following orders:
 1. Spent.
 2. That this Honourable Court be pleased to grant a stay of execution of the Court's Judgment delivered on 8th December, 2023 in Malindi Civil Appeal No.045 of 2022 pending the hearing and determination of this Application.
 3. That the Applicants Notice of Appeal dated 14th December, 2023 be deemed properly filed within the statutory Limit of 14 days.
 4. That this Honourable Court be pleased to grant stay of execution of the Judgment of the Honourable Court delivered on 8th December, 2023 pending the hearing and determination of the intended Appeal.
 5. That the costs of this Application be provided for.
2. The Respondent/Applicant is aggrieved by the judgement of this Court delivered on 8.12.23 and seeks stay thereof. It is averred that a notice of appeal dated 14.12.23 was sent to the Court registry within the statutory period but did not receive response for payment until 16.1.24. The Respondent/Applicant stated that its intended appeal has appreciable chances of success as it raises multiple triable issues of fact and law. The delay in filing and serving the notice of appeal was beyond its control and that if stay



is not granted, the intended appeal will be rendered nugatory. Lastly, that it is only just and fair that the orders sought are granted.

3. The Appellant/Respondent opposed the application through a replying affidavit sworn on 9.2.24. His reply is that the intended appeal does not raise any serious issue for consideration by the court. Further that the appeal is only intended to frustrate him by denying him the fruits of his judgment that has come more than 6 years after the accident. He averred that he will be greatly prejudiced if the application is allowed given that he has incurred and continues to incur great costs while Motrex intends to continue enjoying stay orders. Further that Motrex has not offered any security for costs should the Application be allowed. He urged that should the Court be inclined to allow the Application then it should order the Respondent/Applicant to pay him half the decretal amount and the other be placed in a joint interest-bearing account of the parties' advocates.
4. I will first consider the prayer that the notice of appeal dated 14.12.23 be deemed as properly filed.
5. Rule 77 of the Court of Appeal Rules requires that a notice of appeal be filed within 14 days of the decision against which it is desired to appeal. Rule 77 provides in part as follows:
 1. A person who desires to appeal to the Court shall give notice in writing, which notice shall be lodged in two copies, with the registrar of the superior court.
 2. Each notice under subrule (1) shall, subject to rules 84 and 97, be lodged within fourteen days after the date of the decision against the decision for which appeal is lodged.
6. Section 7 of the *Appellate Jurisdiction Act* empowers this Court to extend the time for filing a notice of appeal 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 expired:

Provided that in the case of a sentence of death no extension of time shall be granted after the issue of the warrant for the execution of that sentence.
7. The impugned judgment was delivered on 8.12.23. The notice of appeal ought to have been filed by 22.12.23. The record however shows that the said notice was lodged on 19.1.24.
8. An order for extension of the time to file an appeal is discretionary. It is an equitable remedy and not a right of a party. In the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR, the Supreme Court listed the following as the under-lying principles that a Court should consider in exercise of its discretion in an application for extension of time:
 1. 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;
 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;



5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
9. The reason proffered by the Respondent/Applicant for delay in filing the notice of appeal was that it did not receive a response for payment for the notice of appeal sent on 14.12.23 until 16.1.24. The Respondent/Applicant has not demonstrated any effort made in pursuing the assessment of the said notice in order to comply with the statutory timelines. It is not enough for a party to send an email to the court and wait for a response without following up to confirm receipt, in the face of a ticking clock.
10. Section 7 of the *Appellate Jurisdiction Act* does not stipulate the number of days that constitute inordinate delay. Each case is to be determined on its own facts, as held in *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR in which the Court of Appeal stated as follows:
- The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.
11. The Respondent/Applicant was aware of the judgment and the period within which it was required to file a notice of appeal. After sending the notice of appeal for assessment via email, the Respondent/Applicant did not follow up the same in spite of being aware that the statutory period was running. In light of this, I find that notwithstanding that the delay was not inordinate, the same is not excusable.
12. The Respondent/Applicant has stated that its intended appeal has appreciable chances of success as it raises multiple triable issues of fact and law. The Respondent/Applicant has however not demonstrated in what manner the intended appeal has "appreciable" chances of success.
13. On the prejudice that is likely to be suffered by the Appellant/Respondent, I have considered that the accident in question occurred in 2017, and the matter is yet to be concluded. I do find that granting the prayer sought will occasion great prejudice to the Appellant/Respondent.
14. In the end, I am not persuaded that the Applicant/Respondent has provided sufficient reason to warrant the grant of the prayer that the notice of appeal filed out of time, be deemed properly filed within the statutory limit of 14 days. The prayer is declined. It follows that the prayer for stay of execution cannot also be granted. I therefore dismiss the Application in its entirety and award costs to the Appellant/Respondent.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 9TH DAY OF MAY 2025

M. THANDE
JUDGE

