



Commissioner of Customs & Border Control v Roshina Timber Mart (Customs Tax Appeal E008 of 2025) [2025] KEHC 12703 (KLR) (Commercial and Tax) (24 July 2025) (Ruling)

Neutral citation: [2025] KEHC 12703 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CUSTOMS TAX APPEAL E008 OF 2025**

F GIKONYO, J

JULY 24, 2025

BETWEEN

COMMISSIONER OF CUSTOMS & BORDER CONTROL APPELLANT

AND

ROSHINA TIMBER MART RESPONDENT

RULING

1. The appellant filed the notice of motion dated 13th March 2025, seeking that the court deem the Memorandum of Appeal filed out of time to have been filed within time. It also seeks that the court consider the appeal properly on record.
2. The application is made under Section 32 *Tax Appeals Tribunal Act*; Rule 10 of the Tax Appeals Tribunal (Appeals to the High Court) Rules 2015; Order 22 rule 22, Order 42 Rules 4, 6 and 7, Section 79G of the *Civil Procedure Act*, Order 51 Rules 1 and 3 of the Civil Procedure Rules 2010 and Section 3 and 3A of the *Civil Procedure Act*.
3. The application is premised on the grounds set out in the body of the application and the supporting affidavit sworn by Judith N. Kithinji.
4. It was deposed that after delivery of the impugned judgment on 17th December 2024, by letter dated 15th January 2025, the applicant requested the Tribunal to supply certified copies of the proceedings and judgment, for an intended appeal.
5. That due to the delay, the applicant was constrained to file only a notice of appeal under section 32 of the Tax Appeals Tribunal (TAT) Act. It lodged a notice of appeal at the Tribunal on 16th January 2025 and served it upon the respondent on the same date.



6. According to the applicant, the delay in lodging the appeal was due to the misplacement of the file, which contained the documents required. It asserts that the error should not occasion harm to it.
7. The applicant submits that its application has been filed without inordinate delay after lapse of the statutory timelines to lodge the Appeal.
8. The applicant also submits that no prejudice will be suffered by the respondent if the orders sought herein are allowed.
9. There was no response by the respondent, which filed its statement of facts dated 29th April 2025.

Analysis and Determination

Guiding Principles

10. The Supreme Court in *Salat v Independent Electoral and Boundaries Commission & 7 others* (Application 16 of 2014) [2014] KESC 12 (KLR) (Civ) (4 July 2014) (Ruling) stated as follows:-

“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; A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court; Whether there will be any prejudice suffered by the respondents if the extension is granted; Whether the application has been brought without undue delay; and Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

Arguable appeal

11. From a perusal of the memorandum of appeal, I am satisfied that the appeal is not frivolous.

Period of Delay

12. Section 53 of the TPA, provides that:-

“Appeals to High Court

53. 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*”

13. Section 32 of the TAT Act states that:-

“32. Appeals to the High Court on decisions of the Tribunal

- (1) A party to proceedings before the Tribunal may, within thirty days after being notified of the decision or within such further period as the High Court may allow, appeal to the High Court,



and the party so appealing shall serve a copy of the notice of appeal on the other party.”

14. The impugned judgment was delivered on 17th December 2024. The appeal ought to have been filed within 30 days, by 17th January 2025.
15. By a letter dated 15th January 2025, the applicant requested the Tribunal to supply certified copies of the proceedings and judgment.
16. Thereafter, the applicant filed its notice of appeal on 16th January 2025 and memorandum of appeal on 4th March 2025. It filed the instant application on 23rd March 2025.
17. There was a delay of 46 days. However, “A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour.” Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet [2018] eKLR

Explanation for the delay

18. The applicant attributed the delay in obtaining the requisite documents for appealing. It exhibited a copy of the letter dated 15th January 2015, through which it requested a certified copy of the judgment and typed proceedings.
19. In my view, this is a satisfactory explanation for the delay.

Prejudice

20. If the extension of time for lodging the appeal is not allowed, the applicant stands to be prejudiced as it will not have an opportunity to be heard. On the other hand, the respondent will also have a chance to be heard in the appeal. And compensation by way of costs is available in the appeal for the successful party.
21. Therefore, I find that it is just and proper to exercise discretion to extend the time for lodging appeal.
22. The application dated 13th March 2025 is allowed as prayed. No orders as to costs as there was no response.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 24TH DAY OF JULY, 2025

F. GIKONYO M

JUDGE

In the presence of: -

1. Ms. Sadia for Ms. Kithinji for Appellant
2. Mkan for Respondent
3. CA Kinyua

