



Whitespace Technologies Limited v Sistemos Communications Limited (Civil Appeal E109 of 2021) [2024] KEHC 1307 (KLR) (24 January 2024) (Ruling)

Neutral citation: [2024] KEHC 1307 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E109 OF 2021
DO CHEPKWONY, J
JANUARY 24, 2024**

BETWEEN

WHITESPACE TECHNOLOGIES LIMITED APPELLANT

AND

SISTEMOS COMMUNICATIONS LIMITED RESPONDENT

RULING

1. The appeal herein was lodged on 15th June, 2021 and admitted for hearing on 5th May, 2022 when directions as to its disposal were issued by the court. On 28th November, 2022, the court issued Notice to Show Cause why the appeal should not be dismissed for want of prosecution and was set for 16th March, 2023.
2. Upon receipt of the Notice to Show Cause, the Appellant filed a Notice of Motion application dated 16th January, 2023 seeking to file an appeal out of time and to enlarge time to file the Record of Appeal in relation to the ruling and order of the trial court.
3. Further, in response to the Notice to Show Cause, the Appellant filed a Replying Affidavit sworn by James Rimui as an advocate for the Appellant on 30th March, 2023 in response to the Notice to Show Cause. The Appellant holds that the trial court delivered a ruling on 24th May, 2021 and on 15th June, 2021 the Appellant filed a Memorandum of Appeal dated 10th June, 2021.
4. The Appellant holds that on 2nd September, 2021, it made a request to the Executive officer at Thika to avail certified copies of the proceedings and after several follow-ups, he was informed that the file was not available. This caused a major delay in procuring the proceedings and later, on 2nd December, 2022, they learnt that the file had been transferred to Kiambu High Court but they did not get a formal communication of the said transfer of the file.



5. The Appellant stated that they later received the proceedings on 8th December, 2022 and due to the delay in procuring them, it intends to file the Appeal out of time. He stated that prior to the matter coming up for the Notice to Show Cause, he had filed the application seeking leave to file an appeal out of time. The Appellant holds that if the matter is dismissed, he will be shut out from the seat of justice. He contends that his appeal has a high chance of success and should be allowed to ventilate the same.
6. The court has considered the Response filed by the Applicant and finds that the same is not satisfactory. This is because the Appeal was lodged in 15th June, 2021 and the Appellant's counsel requested for proceedings and Judgment from the lower court on 28th June, 2021. The Appellant has not provided sufficient reason for the delay in having the appeal prosecuted and or the efforts made between that date of lodging the appeal to the date of obtaining the proceedings, and even after receiving the said proceedings on 8th December, 2022.
7. It is this court's view that the Appellant was only awakened by the Notice to Show Cause that it filed the Notice of Motion application dated 16th January, 2023 seeking to file an appeal out of time or have time within which to file an appeal enlarged. Clearly, this court finds that the Appeal is ripe for dismissal for want of prosecution and the same is hereby dismissed as per the provisions of Order 42 Rule 35(1) of the *Civil Provide Rules* with costs to the Respondent.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 24TH DAY OF JANUARY, 2024.

D. O. CHEPKWONY

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

In the presence of:

Mr. Mwangi holding brief for Mr. Rururi for Appellant

Court Assistant - Martin

