



REPUBLIC OF KENYA



KENYA LAW
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**Indasi v Techno Plast Limited (Miscellaneous Civil Application E1104 of 2024)
[2025] KEHC 14260 (KLR) (Civ) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 14260 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS CIVIL APPLICATION E1104 OF 2024

LP KASSAN, J

SEPTEMBER 17, 2025

BETWEEN

DANIEL MUKHANJI INDASI APPLICANT

AND

TECHNO PLAST LIMITED RESPONDENT

RULING

1. By the motion dated 29.11.2024, Daniel Mukhanji Indasi (hereafter the Applicant) seek for the following orders-
 - i. That leave be granted to the Applicant to file and serve a memorandum of appeal and record of appeal out of time from the ruling and order in Nairobi Milimani CMCC No. 3367 of 2018 (hereafter the lower Court Suit) delivered on 07.08.2024.
 - ii. That the Applicant be granted leave to file and serve the memorandum of appeal out of time and the same be deemed to be properly filed and served.
 - iii. That the time be given within which the Applicant will file and serve a record of appeal.
 - iv. That the costs of the application abide the outcome of the intended appeal or be dealt with as the justice of the case shall require.
2. The application is premised on the grounds on its face thereof amplified by the supporting affidavit deposed by Applicant on even date. The gist of his deposition is that his application seeking to reinstate the lower Court suit was dismissed for non-attendance on 07.08.2024. That having travelled, his advocate could not reach him for purposes of instructions and it is only after his return that he immediately instructed counsel on record to file the instant motion. He goes on to depose that he has a meritorious appeal and is desirous of prosecuting his suit before the lower Court. He concludes by



stating that he stands to suffer irreparable loss should the motion be declined meanwhile any prejudice visited on Techno Plast Ltd (hereafter the Respondent) may be compensated by an award of costs therefore the motion ought to be allowed.

3. Techno Plast Ltd opposes the motion by way of grounds of opposition dated 18.03.2025. It takes issue with the motion on grounds-; that the Applicant advocate has not supplied any material and cogent reason for failure to file an appeal within the stipulated timelines; that the Applicant's application dated 29.11.2024 is an afterthought, as it was filed three months after the application for reinstatement dated 16.04.2024 was dismissed for non-attendance on 07.08.2024; that no sufficient and good cause has been shown why the orders for extension of time to appeal out of time should be granted to the Applicant; that the Respondent will be highly prejudiced if the Applicant's application is allowed as litigation has to come to an end; that there has been unreasonable delay in making the application; that there's no explanation given to the Court to explain why the Applicant delayed in filing his memorandum of appeal within the requisite thirty days; that the application is an abuse of the Court process as the Applicant has moved this Honourable Court with the wrong set of rules; and that the application lacks merit, is frivolous and amounts to an abuse of the process of this Honourable Court.
4. The Applicant's motion was disposed of by way of submissions, of which the Court has duly considered alongside the rival material. In light of the aforesaid the Court postulation that the singular issue for determination concerns:
 - a. Whether the Court ought to grant the leave to the Applicant to appeal out of time?
 - b. Who ought to bear the costs of the motion?

Whether the Court ought to grant the leave to the Applicants to appeal out of time?

5. At the outset, it warrants mentioning that in opposition to the motion, the Respondent preferred to file grounds of opposition. While Order 51 Rule 14 (1) of the CPR recognizes grounds of opposition as one of the modes, to wit, the party may oppose an application, recently the Court of Appeal in *Blue Thaitian SRL (Owners of the Motor Yacht 'Sea Jaguar') v Alpha Logistics Services (EPZ) Limited (Civil Appeal (Application) E012 of 2020) [2022] KECA 1240 (KLR)* observed that the effect of filing grounds of opposition in response to an application confines a party to issues of law and legal arguments only. Why do I digress? A perfunctory review of the Respondent's grounds of opposition appears to, alongside legal issues, encapsulate factual issues. It would have been proper if the Respondent opted to raise factual issues alongside its grounds of opposition, file a replying affidavit.
6. That said, one of the legal issues this Court has identified from the Respondent's grounds in opposition concerns abuse of the Court process given that the Applicant's motion fails to cite the proper provision of statute on which it is anchored. While it is true, the motion captures on its face thereof as having been brought pursuant to Rule 4 of the Court of Appeal Rules. Order 51 Rule 14(2) of the CPR provides that no application shall be defeated on a technicality or for want of form that does not affect the substance of the application. This position is codified in Article 159(2)(d) of *the Constitution* and has been a champion in replete decisions within our jurisdiction. Therefore, the said contestation is not well taken in the circumstance.
7. Moving on the kernel of the motion, the power of the Court to enlarge the time for filing an appeal out of time is expressly donated by Section 79G of the CPA, as well as generally, by Section 95 of the Act. That said, it is trite that for leave to be granted, an applicant is obligated to sufficiently explain to



the satisfaction of the Court the cause of the delay. In *Thuita Mwangi v Kenya Airways* [2003] eKLR the Court reiterated the rendition in *Mutiso v Mwangi* [1997] KLR 630 as follows;

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that generally the matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of delay; secondly, the reason for the delay; thirdly (possibly) the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the Respondent of the application is granted.”

See also: - *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR)

8. The circumstances that led to delay in filing the Applicant’s intended appeal within time have been explained in the Applicant’s affidavit. The explanation advanced is singular, that the Applicant was unavailable on account of having travelled, to wit, he was unable to promptly instruct counsel to lodge an appeal. By and large, from the affidavit material, it cannot be garnered therefrom when the Applicant actually returned from his travels and or instructed counsel or challenges faced on his travel that may have hindered his communication with counsel, given presently the disposal of a plethora of instantaneous communication avenues.
9. As observed in *Mutiso* (supra), the length of delay and reason for delay are key towards unlocking this Court’s discretion. The impugned decision of the lower Court was rendered on 07.08.2024 whereas the instant motion was filed on 04.12.2024. Here the explained delay in presenting the instant motion is close to four (4) months. The forestated bring to mind the rendition of *Makhandia JA in Patrick Wanyonyi Khaemba v Teachers Service Commission, Board of Management, Kapletingi Mixed Day Secondary School & Francis Tanui* [2019] KECA 112 (KLR), wherein he observed that -;

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be explained, hence a plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour.
10. Ultimately, a motion of this nature principally stands or falls on the demonstration of “good and sufficient cause” by an applicant; it is what unlocks this Court’s discretion. Given the aforesaid, while duration in representing the instant motion may appear inordinate, the Court is just barely persuaded by the explanation advanced by the Applicant. Indubitably, it would be a travesty of justice for the Court to drive the Applicant from the seat of justice. Besides, it does not seem that the Respondent will suffer any prejudice that cannot be compensated through costs if the motion is allowed.
11. Concerning the arguability of the appeal, the Court, having perused the grounds in the intended memorandum of appeal, is satisfied that they raise issues worthy of consideration on appeal. That said, based on the language employed in *Mutiso* (supra) the requirement touching on the viability of the intended appeal, is neither mandatory nor sternly applied in an application of this nature. The Court of Appeal in *Vishva Stone Suppliers Company Limited v RSR Stone (2006) Limited* [2020] eKLR stated that “an arguable appeal need not (be one that will) succeed so long as it raises a bona fide issue for determination by the Court.” Lastly, any prejudice that may be occasioned to the Respondent in the circumstance may be easily assuaged by an award of costs.
12. In the circumstances of this case, the Court is persuaded that to facilitate the Applicant’s undisputed right of appeal as equally advanced in *Vishva* (supra), leave is granted to the Applicant to file his



memorandum of appeal within fourteen (14) days of this ruling. The costs of the motion are awarded to the Respondent.

13. Order Accordingly!

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 17TH DAY OF SEPTEMBER 2025

L. P. KASSAN

JUDGE

In the presence of:

Kyalo holding brief Muya for Applicant

Gakungu for Respondent

Court Assistant – Carol.

