



**African China Motor Group Limited v PN Mashru Limited (Civil Appeal
(Application) E137 of 2024) [2025] KECA 1542 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1542 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPEAL (APPLICATION) E137 OF 2024
AK MURGOR, JA
OCTOBER 3, 2025**

BETWEEN

AFRICAN CHINA MOTOR GROUP LIMITED APPLICANT

AND

PN MASHRU LIMITED RESPONDENT

*(An appeal application from the judgment of the High Court of Kenya at Mombasa
(Wangari, J.) delivered on 15th March, 2024 in HCCC Pet No. 6 OF 2009)*

RULING

1. In this application the Applicant, African China Motor Group Limited sought leave to file an appeal out of time against the Judgment of the High Court of Kenya in Mombasa delivered in favour of the Respondent, P.N Mashru Limited on 15th March 2024.
2. In the Notice of motion dated 6th December 2024 brought under Rules 4, 41, 43, 44 and 45 of the Court of Appeal Rules, 2010 the Applicant sought orders:
 - i. That this Court be pleased to grant leave to the Applicant to appeal out of time against the Judgment delivered on 15th March, 2024 in Mombasa Civil Suit No. 6 of 2009; and
 - ii. That this Court be pleased to extend time within which to file and serve the Memorandum of appeal and Record of appeal, and for costs of this Application to be provided for.
3. The Motion is premised on the grounds that following delivery of the Judgment, the Applicant's Advocates immediately requested for certified copies of Judgment and proceedings which were supplied on 22nd May, 2024; that due to unavoidable reasons the Advocates were only able to collect the certified proceedings on 22nd May, 2024; that this resulted in a short delay in preparing and filing of the Memorandum and Record of appeal. It was further contended that the suit is an old matter, where



most documents had been misplaced and access to the court file was necessary to locate the missing documents which resulted in preparation of the Record of appeal taking a longer period.

4. It was asserted that that the Applicant issued instructions to its Advocates to file the current Appeal promptly and without delay, and as a consequence it should not be unduly punished for mistakes, if any, that were out of its control; that further, if this Application is not heard with utmost urgency the Applicant's efforts to revive and or reinstate the suit will come to nought which will subject the Applicant to suffer irreparable loss if the Judgment is not set aside.
5. The motion was supported by an affidavit sworn by Saad Migdad Saad, Advocate on 6th December 2024 who reiterated the grounds set out in the motion.
6. In an affidavit in reply, sworn by Francis Mulili on 6th January 2025 on behalf of the Respondent, it was averred that the motion is defective as it was brought under a non-existent and repealed legal regime; that the Applicant is guilty of laches as it has not explained the delay in filing of the instant application and furthermore, it has failed to meet the threshold requirements for grant of the orders sought.
7. When the motion came up for hearing on a virtual platform, learned counsel Ms. Farha Abdulrahman holding brief for Mr. Saad appeared for the Applicant while learned counsel Mr. Busieka appeared for the Respondent. Both parties filed written submissions which were briefly highlighted during the hearing. The Applicant's submissions reiterated the grounds of the motion and the averments in the affidavit in support.
8. For their part, the Respondent's counsel submitted that the motion was defective having been brought under the Court of Appeal Rules 2010, instead of the Court's 2020 rules; that further, though the Applicant filed and served the Notice of appeal on 2nd April 2024, there was nothing that showed that a letter requesting for proceedings was sent to the registry or copied to the Respondent, and neither was a Certificate of delay produced; that without having requested for the proceedings or copied the Respondent, the Applicant could not benefit from the proviso to Rule 84 of the Court of Appeal rules and therefore should have filed the Memorandum and Record of appeal within 60 days from the date of filing the Notice of appeal, as specified by the rules. It was also submitted that the delay had not in any way been explained.
9. Under rule 4 of the Court of Appeal Rules this Court has jurisdiction to extend time in a matter such as this in the following terms:

“The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”
10. This Court in the case of *Leo Sila Mutiso vs Hellen Wangari Mwangi* [1999] 2 EA 231 set out the principles to be applied in exercise of its discretion in determination of any application under rule 4 thus:

“...the decision whether or not to extend time is discretionary. The Court in deciding whether to grant an extension of time takes into account the following matters: first, the length of the delay; second, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”



11. In the instant case, the Judgment was delivered on 15th March 2024. It is not disputed that the Notice of appeal was lodged on 2nd April 2024. This motion was filed on 6th December 2024. When computed, this would give rise to a delay of 9 months.
12. As to whether the delay has been explained? In seeking to explain the delay the Applicant stated that its counsel immediately applied for the certified copies of Judgment and proceedings, which were collected on 22nd May 2024 due to unavoidable reasons. There is no indication of when they were notified that the proceedings were ready for collection. It was further claimed that, because the suit is old, most of the documents had been misplaced and it became necessary to locate the missing documents from the court file, which resulted in preparation of the Record taking more time than was expected.
13. To begin with, a detailed examination of the pleadings and the annexures, does not show that the letter bespeaking the proceedings was adduced before this Court. The necessity of the letter requesting for proceedings is set out in the proviso to Rule 84 of this Court's rules, which specifies:

“... Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with sub rule two within 30 days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as maybe certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.”
14. In the case of *Mistry Premji Ganji (Investments) Limited vs Kenya National Highways Authority [2019] eKLR* it was observed that:

“...the computation of the 60-day window within which he should lodge the Record of appeal is suspended during the typing of proceedings provided the appellant serves the letter bespeaking proceedings upon the court and the respondent. A certificate of delay is usually issued in such cases, specifying the time taken for the proceedings to be typed, for purposes of exclusion of the same during computation”.
15. What this means is that, where the Applicant requests for the proceedings in writing, and which letter is copied to the Respondent, time for preparation of the proceedings would be excluded from computation of the period of delay.
16. In this case, since there is no letter bespeaking a request for proceedings, and nor has a certificate of delay been produced, it becomes clear that the time for preparation of the proceedings cannot be excluded from the period of delay, and therefore, as required by rule 84, the Applicant should have filed the Record within 60 days from the date of filing the Notice of appeal, which it failed to do.
17. The above missteps notwithstanding, the question that then begs is whether the Applicant has explained the delay in filing the Record. In advancing reason for the delay, the Applicant has sought to explain that, it did not collect the Judgment and proceedings when they were ready on 22nd May 2024 for some unforeseeable reason, and because the matter is old, there were documents missing from the court file that required to be traced. I find the explanation provided to be far from sufficient. This is because, firstly, it is unclear as to what was meant by unforeseeable circumstances or how they delayed the collection of the proceedings. Secondly, no indication was provided as to what documents were missing, and what their importance was in the Record. Furthermore, no communication with or from the Registry in support of the assertion that documents were missing from the court file were evident.



Without any such evidence, nothing supported the explanation that missing documents led to the delay in filing the Record.

18. Given the foregoing, I am not satisfied that the delay in filing the Memorandum and Record has been satisfactorily explained.
19. Turning to the question of whether the appeal has any measure of success, upon consideration of the material before the Court, it is observed that the Applicant did not file a draft Memorandum of appeal. As a consequence, there are no grounds of appeal upon which this Court can discern whether or not the appeal has any likelihood of success. And given the unenthusiastic and lethargic manner in which this motion was brought, it cannot be doubted that the Respondent will suffer prejudice as it will continue to be denied the fruits of its Judgment, were time extended to file an appeal.
20. In sum, the Applicant having failed to satisfy the requirements of rule 4, I decline to exercise my discretion to extend time for filing the Memorandum and Record of appeal. Accordingly, the Notice of motion dated 6th December 2024 is dismissed with costs to the Respondent.

It is so ordered.

DATED AND DELIVERED IN MOMBASA THIS 3RD DAY OF OCTOBER, 2025.

A. K. MURGOR

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JUDGE OF APPEAL

I certify that this is a True copy of the original Signed

DEPUTY REGISTRAR

