



Monica Hardware Limited v Corrugated Sheets Limited (Civil Application E090 of 2025) [2025] KECA 1718 (KLR) (24 October 2025) (Ruling)

Neutral citation: [2025] KECA 1718 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E090 OF 2025
DK MUSINGA, JA
OCTOBER 24, 2025**

BETWEEN

MONICA HARDWARE LIMITED APPLICANT

AND

CORRUGATED SHEETS LIMITED RESPONDENT

(Being an application for leave to change advocates and leave to file notice and record of appeal out of time against the Judgment of the High Court of Kenya at Nairobi (Janet Mulwa, J.) dated 25th September 2024 in HCCC No. 396 of 2014)

RULING

1. The applicant's notice of motion dated 20th February 2025 seeks leave to have Messrs. Kadenge Associates Advocates come on record for him instead of Messrs. Mathenge Ndiangui & Co. Advocates and leave to file notice and the record of appeal out of time in respect of a judgment that was delivered by the High Court on 25th September 2024 in Civil Case No. 396 of 2014.
2. The applicant's affidavit in support of the application sworn by Antony Mwangi Mbugua, a director of the applicant states, inter alia, that the applicant has instructed Messrs Kadenge Associates Advocates to act for it in place of Messrs. Mathenge Ndiangui & Co. Advocates; that the applicant had earlier instructed its former advocates (Mathenge Ndiangui & Co.) to defend it in Civil Suit No. 396 of 2014 but the advocate did not file any defence thereto and as a result judgment was entered against the applicant on 25th September 2024. However, the applicant did not know about the entry of the said judgment until execution process was commenced against it.
3. The applicant has now instructed its current advocate to file an appeal from the said judgment but cannot do so unless the orders sought herein are granted. The applicant faults its former advocates for the predicament it now finds itself in.



4. In its replying affidavit sworn by Harish Patel, a director of the respondent, he states that sometime in 2014 the respondent filed High Court Civil Case No. 396 of 2014 against the applicant claiming a sum of Kshs.24,200,679.04; that the applicant entered appearance but did not file a defence to the suit; later on, a notice of change of advocates dated 14th February 2020 was filed by Khaminwa & Khaminwa Advocates, who did not also file any defence and the matter proceeded undefended until judgment was entered in favour of the respondent in 2024.
5. The respondent states that the intended appeal is frivolous and has no chances of success, and that it will be highly prejudiced if this application is allowed, considering that the claim has been in court since 2014. The respondent therefore prays that the application be dismissed with costs.
6. I have considered the application and the submissions filed by both parties. Under rule 4 of this Court's Rules, the Court is empowered to extend time for doing any act authorized or required by the Rules. However, the exercise of that discretion has to be done judiciously. In so doing, the Court has to consider several factors, among them, the length of the delay; the reason for the delay; whether the intended appeal is arguable; the degree of prejudice to the respondent if the application is granted; whether the applicant acted with diligence; and whether there is a public interest element in the matter. (See Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR).
7. It is not in dispute that there has been inordinate delay in filing the application for extension of time. That delay has not been sufficiently explained. The applicant's former advocates, Messrs. Mathenge Ndiangui & Co. as well as Khaminwa & Khaminwa Advocates did not file any defence to the respondent's claim. The claim itself was for goods that had been sold and delivered to the applicant.
8. It is not sufficient for the applicant to simply blame its former advocates when there is no demonstration on its part that any effort was made to follow up on the progress of the suit. In *Habo Agencies Limited vs Wilfred Odhiambo Musingo* [2015] eKLR this Court stated:

“It is not enough for a party in litigation to simply blame the Advocates on record for all manner of transgressions in the conduct of the litigation. Courts have always emphasized that parties have a responsibility to show interest in and to follow up their cases even when they are represented by counsel.”
9. Regarding the chances of success of the intended appeal, it appears to me that the same are minimal, if at all. In the impugned judgment, the learned judge observed that the claim was in respect of goods sold and delivered by the respondent to the applicant way back in 2010. The trial court considered the evidence that was tendered by the respondent and came to the conclusion that there was no dispute that the applicant had been supplied with the said goods and had not paid for the same. In the absence of any statement of defence, the court entered judgment in favour of the respondent on 25th September 2024. I agree with the respondent that it would be quite prejudicial to it if this application were to be granted, considering the length of time this matter has taken in court.
10. All in all, I find this application unmeritorious and dismiss it with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF OCTOBER 2025.

D. K. MUSINGA, (PRESIDENT)

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JUDGE OF APPEAL



I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

