



**Pioneer Plumbers Limited v Morris & Company Limited & another (Civil Appeal (Application) 139 of 2016) [2025] KECA 1755 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1755 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) 139 OF 2016  
F SICHALE, JA  
OCTOBER 24, 2025**

**BETWEEN**

**PIONEER PLUMBERS LIMITED ..... APPLICANT**

**AND**

**MORRIS & COMPANY LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**MORRIS & COMPANY (2004) LIMITED ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Application for Restoration of Civil Appeal No. 139 of 2016 to hearing on merit arising from the Orders of the Court of Appeal given on 17th September 2018, dismissing the Appeal for want of prosecution.)*

**RULING**

1. By the motion on notice dated 25<sup>th</sup> October 2018, brought pursuant to the provisions of Sections 3A and 3B of the [Appellate Jurisdiction Act](#) and Rules 1 (2), 1 (3), 3, 4, 42, 43, 100, 102 (1), (2) and (3) of the Court of Appeal Rules 2010 and Articles 10, 19, 20, 21 47 and Article 159 (1) and (2) of [the Constitution](#) of Kenya 2010, Pioneer Plumbers Limited (“the applicant herein”) has sought the following orders:
  - “i. Spent.
  - ii. Spent.
  - iii. Spent.
  - ii. That the applicant be granted leave to extend the time for filing this application and the same be deemed as duly filed.
  - iii. That the Order dismissing Civil Appeal Number 139 of 2016 given on 17<sup>th</sup> September 2018 for want of prosecution be set aside and the appeal be allowed for hearing hereof.



- ii. That the applicant be granted leave to extend time to file its written submissions.
- iii. That the costs of this application be provided for.”

1. The motion is supported on the grounds on the face of the motion and an affidavit sworn by Rajinder Billing, the Advocate who has the conduct of this matter on behalf of the applicant who deposed inter alia that when the appeal came up for hearing on 17<sup>th</sup> September 2018, he had an urgent matter and had travelled to London from Thursday 6<sup>th</sup> September 2018 to 5<sup>th</sup> October 2018.
2. That, he had communicated with counsel for the 1<sup>st</sup> respondent (Mr. Wandago), who had agreed for extension of time to enable him file written submissions on behalf of the applicant.
3. That, further he had instructed Ms. Onyango Advocate to hold his brief and seek adjournment of the matter and further, to seek extension of time for 30 days to enable him file written submissions, and that he had not given counsel instructions to proceed with the matter since he had communicated with Mr. Wandago, counsel for the 1<sup>st</sup> respondent who had agreed to the adjournment. His firm subsequently wrote a letter to Messrs Okong’o Wandago & Company Advocates confirming the said conversation.
4. That, the firm of Okong’o Wandago & Associates responded to their letter but to their shock, the Court of Appeal on 17<sup>th</sup> September 2018, proceeded to dismiss the appeal pursuant to the provisions of Rule 102 of the Court of Appeal Rules 2010.
5. He thus deposed that his non-attendance was not intentional as he had prudently sent a representative who had been given instructions to seek adjournment of the matter since he had communicated with counsel for the 1<sup>st</sup> respondent who had agreed to the adjournment as well as to the extension of time for filing of submissions for 30 days.
6. There was also an affidavit by Walter Onchuru Motari, a clerk in the employ of the firm of R. Billing and Company Advocates who deposed inter alia, that Mr. Billing Advocate had communicated on phone and via email with counsel for the 1<sup>st</sup> respondent, requesting for extension of time to enable the appellant file its written submissions and that Mr. Wandago had acceded to this request.
7. There was no response on part of the respondents despite having been served with a copy of the application on 26<sup>h</sup> October 2018 and a copy of the hearing notice on 26<sup>th</sup> September 2025, at 1:34PM via email.
8. The applicant in their submissions basically reiterated the averments in the supporting affidavit to the motion and submitted inter alia that although they were required to file the present application within 30 days of the court order given on 17<sup>th</sup> September 2018 i.e. on or before 16<sup>th</sup> October 2018, there was a delay of almost 8 days which was not inordinate as the applicant’s counsel was engaged in several court and arbitration matters that required preparation and he was unable to devote sufficient time to file the present application within the 30 day period which was not deliberate or willful but purely due to work pressure. For this proposition reliance was placed on the case of *Kasturi Limited v Nyeri Wholesalers Limited* eKLR 2014.
10. It was further submitted that no prejudice or hardship would be occasioned to the respondents that cannot be compensated by way of costs.



11. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the supplementary affidavit, the applicant's submissions, the cited authorities and the law.
12. The principles upon which this Court exercises its discretion pursuant to Rule 4 to extend time or not are now old hat. The Court has wide and unfettered discretion in deciding whether to extend time or not. However, in exercising its discretion, the Court should do so judiciously.
13. See *Mwangi v Kenya Airways Limited* (2003) KLR 486 where this Court stated thus:

“Over the years, the Court has set out guidelines on what a single Judge should consider when dealing with an application for extension of time under Rule 4 of the Rules. For instance, in *Leo Sila Mutiso V Rose Hellen Wangari Mwangi* (Civil Application No. Nai 255 of 1997 (unreported), the Court expressed itself thus;

“It is now well settled that the decision whether or not to extend time for appealing is essentially discretionary. It is also well settled that in general, the matters which this Court takes into account in deciding whether to grant an extension of time are; first the length of the delay, secondly, 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.”
14. In the instant case and as regards the length of the delay, the record shows that the impugned appeal was dismissed on 17<sup>th</sup> September 2018, whereas the instant application was filed on or about 25<sup>th</sup> October 2018.
15. Pursuant to the provisions of Rule 102 (1) (3) of the Court of Appeal Rules 2010, the instant motion ought to have been filed within 30 days from the date of dismissal of the appeal i.e. on 17<sup>th</sup> October 2018. The same was however not done until 25<sup>th</sup> October 2018, a delay of about 8 days which I do not consider to be inordinate.
16. Turning to reasons proffered for the delay, it was contended that the same was due to the fact that when the appeal came up for hearing on 17<sup>th</sup> September 2018, counsel for the applicant had an urgent matter and had travelled to London as from Thursday 6<sup>th</sup> September 2018, up to 5<sup>th</sup> October 2018 and he had communicated with counsel for the 1<sup>st</sup> respondent who had agreed for extension of time to enable the applicant file its submissions.
17. Given the circumstances, I consider the reasons given for the delay to be reasonable/plausible and ultimately therefore, I am of the considered opinion that the delay herein has been sufficiently explained to the satisfaction of this Court.
18. As to the arguability or otherwise of the intended appeal, it would not be in my place to make definitive findings on the same sitting as a Single Judge and I will therefore not delve into the issue.
19. Finally on prejudice, I am satisfied that the respondents would suffer no prejudice if the instant motion was to be allowed as they have not even responded to the same despite having been served with a copy of the motion
20. The totality of my findings therefore is that that the applicant has demonstrated and satisfied the existence of the principles for consideration in the exercise of my unfettered discretion pursuant to Rule 4 of this Court to extend time.
21. Accordingly, the applicant's motion dated 25<sup>th</sup> October 2018, is merited and the same is hereby allowed in terms of prayer 4 only and the instant motion shall be duly deemed as having been filed on time.



22. Regarding the prayer for setting aside the orders dated 17<sup>th</sup> September 2018, dismissing the applicant's appeal for want of prosecution, it would not be in my province to delve into the same sitting as a Single Judge and I will therefore make no further comment regarding the same.
  23. The applicant shall proceed to file the application for reinstatement of the appeal within 10 days from the date of this ruling failure to which these orders shall stand vacated.
  24. The costs of this motion shall abide the outcome of the application referred to in paragraph 21 above.
- It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF OCTOBER, 2025.**

**F. SICHALE**

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

