



REPUBLIC OF KENYA



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Roofs and Building Maintenance Limited v Kimani & another (Civil Application E065 of 2025) [2025] KECA 1990 (KLR) (21 November 2025) (Ruling)

Neutral citation: [2025] KECA 1990 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E065 OF 2025
M NGUGI, JA
NOVEMBER 21, 2025**

BETWEEN

ROOFS AND BUILDING MAINTENANCE LIMITED APPLICANT

AND

DAVID KINUTHIA KIMANI 1ST RESPONDENT

GEORGE KIHARA NJIHIA 2ND RESPONDENT

(Being an application for extension of time to file an appeal from the judgment of G. Nzioka, J. dated 12th May 2020 in High Court Commercial Case No. 318 of 2014)

RULING

1. In its application dated 6th February 2025, the applicant, Roofs and Building Maintenance Limited, seeks an order for extension of time to lodge its memorandum of appeal and record of appeal against the judgment of G. Nzioka, J. dated 12th May 2020 in High Court Commercial Case No. 318 of 2014; and for leave to file its appeal out of time. The applicant also prays for the costs of the application.
2. The application is brought under sections 3, 3A and 3B of the *Appellate Jurisdiction Act* and rules 4, 63 and 64 of the Court of Appeal Rules, 2022. It is based on the grounds set out on its face and is supported by an affidavit sworn by Geoffrey Njoroge Mburu, a director of the applicant, on 6th February 2025. The applicant avers that after judgment was delivered on 12th May 2020, it filed, through its then advocates, the firm of Kariuki Muigua & Co. Advocates, a notice of appeal dated 20th May 2020. It also requested for certified copies of proceedings, judgment and decree.
3. The applicant avers that due to disagreements with its then advocates regarding remuneration, the proceedings and judgment were not pursued; and that because of the emergence of the Covid 19 pandemic, the preparation of the proceedings took a long time; and the applicant took up the



responsibility of following up the proceedings, including by complaining about the delay to the Judiciary Ombudsman.

4. The applicant avers that it later learnt that its former advocates had received an email dated 2nd May 2024 informing them that the proceedings were ready; that it filed a notice to act in person on 26th September 2024; that even after obtaining the proceedings, it took a long time to obtain a certified copy of the judgment, which was supplied on 26th July 2024; that a certificate of delay was issued on 7th October 2024, while the decree was only issued on 10th January 2025; and that it filed the present application on 7th February 2025.
5. The applicant's case thus is, in essence, that while there was a delay in filing the memorandum and record of appeal, such delay was due to factors that were beyond its control, and it put every effort it could to obtaining the documents required for filing its appeal against the decision of the High Court.
6. The applicant contends that it acted diligently in following up on the preparation of proceedings and has not been indolent. It is its case that it has an arguable appeal as set out in its draft memorandum of appeal annexed to the affidavit in support of its application.
7. The application is opposed. The respondents filed affidavits in reply sworn on 5th and 16th June 2025 respectively. The gist of their positions is that the applicant is guilty of inordinate delay, which it has not explained sufficiently, and it therefore does not deserve the exercise of this Court's discretion in its favour. The 1st respondent notes that the judgment was delivered on 12th May 2020 and a notice of appeal filed shortly thereafter, but no record of appeal has been filed to date, some five years later.
8. Further, that the certificate of delay covered the period 20th May 2020 – 29 April 2024, and the record of appeal ought to have been filed by 19th September 2024. It is further noted that the applicant only filed this application in February 2025, and in the 1st respondent's view, the applicant's explanation for the delay demonstrate indolence rather than diligence.
9. The 2nd respondent observes that no application was filed by the applicant's former advocates to cease acting, and that the notice to act in person dated 26th September 2024 was not served on his advocate until 8th January 2025; that contrary to the applicant's averments, the High Court registry continued to operate by email during the pandemic; and that the applicant did not make prompt reminders for proceedings as letters were only written in February 2022 and February 2023, more than a year apart. The 2nd respondent avers that the typed proceedings were ready on 2nd May 2024; that the judgment was placed on the file on 15th May 2024; the certificate of delay was issued on 19th July 2024; and the record of appeal should therefore have been filed by 19th September 2024.
10. The 2nd respondent asserts that the applicant only took steps after the time for filing the appeal had lapsed. In the respondents' view, the applicant's affidavit is replete with excuses, and the applicant has not demonstrated sufficient cause for exercise of discretion in his favour.
11. The applicant filed submissions dated 6th June 2025 while the respondents filed submissions dated 28th September 2025, which I have read and considered.
12. The factors that the Court should consider in determining whether to exercise discretion under rule 4 of this Court's Rules in favour of a party are well settled. These are the length of the delay, the reason for the delay, (possibly) the chances of the appeal succeeding, and the degree of prejudice to the respondent should the application be allowed-see-Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR and Leo Sila Mutiso v Hellen Wangari Mwangi [1999] 2 EA 231.



13. The judgment that the applicant seeks to appeal from was delivered on 12th May 2020 and a notice of appeal filed on 20th May 2020. The certificate of delay issued to the applicant indicated that the period 20th May 2020 to 29th April 2024 should be excluded from the computation of time.
14. Rule 84 of the Rules of this Court requires a record of appeal to be filed within sixty days of the lodging of the notice of appeal, exclusive of the time certified by the court for preparation and delivery of proceedings. The record of appeal should therefore have been filed within sixty days from 29th April 2024, that is to say before 1st July 2024. However, I note that the Certificate of Delay was issued to the applicant on 19th July 2024, and if one attributes this further delay to the court, the applicant had until 19th September 2024 to file its record of appeal.
15. The applicant avers that there were problems accessing various documents necessary for filing its appeal, and it made concerted efforts to obtain the said documents, including writing letters to the Deputy Registrar and the Judiciary Ombudsman, in its bid to be furnished with the documents. I note from the documents on record that the applicant filed a notice to act in person on 26th September 2024, two days after the sixty-day period for it to file its record of appeal, if one computes the time from the date the certificate of delay was issued.
16. I have noted the correspondence attached to the application, consisting of reminders with regard to the proceedings, judgment and decree required to file its appeal. I have also noted the averments by the applicant that the judgment was missing from the High Court file and the correspondence with the trial judge and the Deputy Registrar and Presiding Judge of the Commercial Division with respect thereto. Having received the proceedings, the certificate of delay and the judgment, the applicant ought to have filed its record of appeal by 19th September 2024. It avers, however, that it could not file the record as it still had to obtain the decree of the Court, which it did on 10th January 2025.
17. It must be acknowledged that the appellant encountered quite some bureaucratic difficulties in obtaining the requisite documents to file its appeal. The respondents have submitted that the delay in filing the record of appeal is inordinate. I note that while the applicant received the decree on 10th January 2025, it still took another month or so before filing this application on 7th February 2025. Can this period be described as inordinate?
18. I am not persuaded that either this period, or the period following the issuance of the certificate of delay, is inordinate. I note that the applicant was pursuing the proceedings and judgment without benefit of counsel. It may therefore be excused for not being aware that it could file its record of appeal within the statutory period, and thereafter seek leave to file a supplementary record to include the documents that it had had difficulty obtaining from the court. That being the case, I am satisfied that the applicant has given sufficient reasons for the delay in filing the record of appeal.
19. I have also considered the applicant's draft memorandum of appeal in which the applicant indicates its intention to challenge several findings of the trial court. It alleges, among other things, that the judge misapprehended the terms of the contract between the parties and finding that it was a fixed sum contract rather than a fixed rate contract; and for failing to find that the applicant had performed additional works on the respondents' projects.
20. The jurisprudence of this Court is that even one arguable ground of appeal is sufficient, and it need not be one that will ultimately succeed, but one that raises a bona fide point deserving of the Court's consideration. I am satisfied that the applicant has satisfied the requirements for exercise of discretion with respect to this factor.



21. The final factor to consider is whether the grant of the order sought will cause prejudice to the respondents. While the delay in reaching finality in the dispute between the parties may cause some prejudice to the respondents, they have not contended that such prejudice as they may suffer is not compensable by way of costs. In any event, the interests of justice, on the facts of the matter before me, demand that the applicant is given an opportunity to file and ventilate its appeal by extending the time for so doing.
22. Accordingly, I find that the application dated 6th February 2025 is merited, and it is hereby allowed, subject to the following conditions:
 - i. The applicant shall file and serve its memorandum and record of appeal within forty- five (45) days hereof;
 - ii. That in default, the leave granted herein shall stand vacated.
23. The costs of the application shall abide the outcome of the appeal.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF NOVEMBER, 2025.

MUMBI NGUGI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

