

**IN THE COURT OF
APPEAL AT
NAIROBI
(CORAM: ODUNGA, JA (IN CHAMBERS))
CIVIL APPEAL (APPLICATION) NO. 30 OF
2017**

BETWEEN

CHANASE INVESTMENTS LTD.....APPLICANT

AND

**KERUZI ENTERPRISES LTD.....1ST
RESPONDENT**

**JOSEPHINE KERUBO NYARIBO.....2ND
RESPONDENT DAMARIS**

MICHOMA.....3RD RESPONDENT

**JANE KINA KIBWAGE.....4TH
RESPONDENT**

**JULIUS KIBWAGE.....5TH
RESPONDENT**

**JAMES KIMANI.....6TH
RESPONDENT JEREMIAH NYATICHI.....**

7TH RESPONDENT EXOTICA COMPANY LTD.....

.....8TH RESPONDENT

(Being an application for extension of time to file an application for reinstatement of the appeal out of time against the rulings and judgment of the High Court of Kenya at Nairobi (Pal, Kuloba & Rawal, JJ.) dated on 4th October 1995, 26th July 2000 and 8th December 2011 respectively and the subsequent Decree dated 19th March 2012

in

H.C.C.C. No. 3818 of 1994

RULING

1. On 5th May 2025, this Court (***Gatembu, Jamila Mohammed and Muchelule JJA***), in a short order directed as follows:

“When this appeal was called out for hearing this morning, there was no appearance for either party despite notice of hearing having

been served. In the circumstances, the appeal is dismissed for non-appearance under Rule 105(1) of the Court of Appeal Rules with no orders as to costs.”

2. By a Notice of Motion dated 3rd June 2025, the applicant herein, **Chanase Investments Ltd**, seeks:

“The time for filing an application to reinstate the appeal No. 30 of 2017 be enlarged/extended within 30 days from the date of the order.”

3. What seemed to have necessitated the application is Rule 105(1) as read with subrule (3) of this Court’s Rules, 2022 which provides as follows:

(1) If, on any day fixed for the hearing of an appeal, the appellant does not appear, the appeal may be dismissed and any cross-appeal may proceed, unless the Court deems fit to adjourn the hearing and, in such instance, may order the appellant to pay court adjournment fees and costs to the other parties present: Provided that where an appeal has been so dismissed or any cross-appeal so heard has been allowed, the appellant may apply to the Court to restore the appeal for hearing or to re- hear the cross-appeal, if he or she can show that he or she was prevented by any sufficient cause from appearing when the appeal was called on for hearing.

(2)

(3) An application for restoration under the proviso to sub rule (1) or the proviso to subrule

(2) shall be made within thirty days after the decision of the Court or, in the case of a party who should have been served with notice of the hearing but was not so served, within thirty days after his or her

first hearing of that decision.

4. The applicant's application was supported by an affidavit sworn by Muia Kilonzo. Although he does not disclose his capacity in the applicant, since there was no objection, I assume that he is duly competent to swear the affidavit on behalf of the applicant. What I can glean from the affidavit in support of the urgency, the grounds on the face of the application and the contents of the supporting affidavit, due to technical issues with his phone, he was unable to receive communication from the Court regarding his matter including the hearing notice for 5th May 2025. However, on that very day he came to the Court registry to confirm the orders issued earlier on when he came to know that his appeal had been dealt with.
5. I have not seen any submissions filed by the parties in respect of this application. Rule 105(3), as stated above states that the application for restoration be made within thirty days after the decision of the Court or, in the case of a party who should have been served with notice of the hearing but was not so served, within thirty days after his or her first hearing of that decision. The application before me is dated 3rd June 2025. The last day,

according to my

calculation, for making the application for restoration was 4th June 2025. Clearly, by the time the applicant was making this application, it was still within time to apply for restoration of his dismissed appeal.

6. In the premises, I find that this application was unnecessary and premature.
7. It is hereby dismissed with no order as to costs.
8. Orders accordingly.

Dated and delivered at Nairobi this 27th day of February, 2026.

G.V ODUNGA

.....
JUDGE OF APPEAL

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

Signed _

DEPUTY

REGISTRAR.