

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CUSTOMS TAX APPEAL NO. E019 OF 2025

**COMMISSIONER OF CUSTOMS &
BORDER CONTROL.....
APPELLANT**

VERSUS

**CHRYSA AFRICA LIMITED.....
.....RESPONDENT**

RULING

1. The Commissioner of Customs & Border Control, the Appellant herein, filed the Notice of Motion dated 12th November 2025 seeking that this Court sets aside the orders issued on 12th November 2025 dismissing the appeal and that the appeal be reinstated for hearing on the merits.
2. The application is supported by the annexed affidavit of Elisha Nyapara, who deposes that the delay in filing the record of appeal was occasioned by the delay in obtaining typed proceedings from the Tribunal. It is further deposed that failure to attend Court was due to medical treatment for a chronic illness and, on the material date, a technical hitch within the Applicant's system.

3. The Applicant avers that the appeal is arguable with high chances of success and that no prejudice will be occasioned to the Respondent if the orders sought are granted.
4. The Respondent opposes the application through the grounds of opposition and a replying affidavit sworn by Robert Waruiru, both sworn on 24th November 2025.
5. The Respondent contends that there is no competent appeal on record capable of reinstatement; that the Appellant has persistently disobeyed clear court directions, and that the application is an abuse of the court process.
6. It is further contended that reinstatement would occasion prejudice through delay, costs, and continued uncertainty, and that the Applicant has failed to demonstrate sufficient cause to warrant the exercise of this Court's discretion.

Analysis and determination

7. I have considered the application, the affidavits on record, and the rival arguments.
8. The background to this matter is not in dispute. On 26th May 2025, the Court directed the Appellant to file the record of appeal within twenty-one days. That direction was not complied with. On 24th September 2025, there was neither compliance nor attendance by the Appellant, and the Court granted a further extension, with a clear warning that failure to comply would result in dismissal.
9. Even then, there was no compliance. On 21st October 2025, the Court gave yet another indulgence, again on strict timelines. When the matter came up on 12th November

2025, there was still no record of an appeal and no appearance by the Appellant. The Court then dismissed the appeal.

10. The question now is whether the Court should exercise its discretion to set aside that dismissal.
11. The principles governing such discretion are well settled. The power of the Court to set aside its orders is discretionary and must be exercised judiciously to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but it is not designed to assist a person who has deliberately sought to obstruct or delay the course of justice.
12. The test is whether the delay is prolonged or inexcusable. The Appellant attributes the delay to the delay in obtaining typed proceedings from the Tribunal. While a delay in obtaining typed proceedings can, in appropriate cases, justify some lapse, that explanation does not account for the consistent failure to attend court or comply with multiple clear directions. This was not a single default. It was a pattern of non-compliance over several months, even after the Court extended time more than once.
13. Further, I also find the explanation relating to illness and technical difficulties has also not been supported by sufficient material to demonstrate that the Appellant was genuinely unable to act.

14. In the case of **Cecilia Wanja Waweru v Jackson Wainaina Muiruri & another [2014] eKLR** the Court of Appeal held that

“There is no set rule as to what constitutes inordinate delay. Whether or not a party is guilty of inordinate delay depends on the circumstances of the case. We are of the considered view that the learned judge in considering the application, should have looked at the appellant’s conduct from the time the appeal was filed up to the date the application for reinstatement was filed...”

15. The Appellant has not filed a record of appeal as a consequence there is no substantive appeal on record capable of being reviewed. I am of the view that what the Appellant is seeking is an opportunity to comply with the directions of the court that were repeatedly ignored.
16. Courts must be slow to shut out litigants from being heard. However, that principle must be balanced against the need for orderly conduct of proceedings and respect for court directions. Litigation cannot be conducted at the convenience of one party.
17. Extension of time is not a matter of right but an equitable remedy that is only available to a deserving party at the discretion of the court. In the premises, I am not persuaded that the Appellant has demonstrated sufficient cause to warrant reinstatement and extension of time. The

Appellant has exhibited utmost indolence and disregard for the court orders.

18. In this case, I find that the Appellant's conduct demonstrates a lack of diligence and a disregard for the Court's timelines. The delay is both prolonged and inadequately explained. To reinstate the appeal in these circumstances would undermine the authority of the Court and prejudice the Respondent, who is entitled to finality.
19. In the premises, the Notice of Motion dated 12th November 2025 is devoid of merit and is hereby dismissed with costs.

RULING delivered virtually, dated and signed at **NAIROBI**

This **30th** day of **April** 2026.

P.M. MULWA
JUDGE

In the presence of:

Mr. Nyapara for Appellant

Ms. Nderitu h/b for Mr. Waweru for Respondent

Court Assistant: *Lispa*