



**Fleet Logistics Limited v Sigma Limited & 3 others (Civil Application E604 of 2024) [2025] KECA 357 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KECA 357 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E604 OF 2024  
AO MUCHELULE, JA  
FEBRUARY 28, 2025**

**BETWEEN**

**FLEET LOGISTICS LIMITED ..... APPLICANT**

**AND**

**SIGMA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**MANAIR LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> RESPONDENT**

*(An application for extension of time to file and serve a notice of appeal against the judgment and decree of the Environment and Land Court of Kenya at Nairobi (O. Angote, J.) dated 8<sup>th</sup> February 2024 in ELC No. 34 of 2018)*

**RULING**

1. Rule 4 of the Court of Appeal Rules provides that:-

“The Court may, on such terms as may be just, by order, extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”

2. In dealing with an application for extension of time to appeal, the Court will be exercising discretionary jurisdiction which will be depended on the length of the delay; the prejudice that the respondent may suffer, if extension is granted; the possible chances of the appeal or intended appeal, if the applicant is allowed to appeal; and the conduct of the parties (Muringa Company Limited -vs- Archdiocese



of Nairobi Registered Trustee [2020]eKLR). The Court will be dealing with the bid to realise the applicant's underpinned constitutional right of appeal, on one hand, and the respondent's interest in realizing the fruits of his judgment and decree, on the other hand.

3. The background of this application is that the 1<sup>st</sup> respondent, Manair Ltd, sued the applicant, Fleet Logistics Ltd, and the 2<sup>nd</sup> to 4<sup>th</sup> respondents, Sigma Limited, National Land Commission and Chief Land Registrar, for injunction to restrain them from entering or remaining upon the premises on LR No. 20274 Grant No. I.R. 63991 or offering for sale or in any way alienating it; an order directed at the 4<sup>th</sup> respondent to cancel the grant dated 28<sup>th</sup> January 1994 over the land in the name of the 2<sup>nd</sup> respondent and transferred to the applicant on 19<sup>th</sup> January 2018; damages for trespass; and costs. The applicant filed a defence denying every claim in the suit. In the counter-claim, the applicant sought a declaration that it had a proper title to the land which had been transferred to it by the 2<sup>nd</sup> respondent. It asked for an order against the 4<sup>th</sup> respondent to cancel the grant No. I.R 63991 over the land dated 1<sup>st</sup> April 1994 in the name of Jackson Itirithia Kalweo transferred on 29<sup>th</sup> September 1995 to the 1<sup>st</sup> respondent; general damages and costs.
4. In the judgment delivered on 8<sup>th</sup> February 2024 by the learned Judge (O. Ongote, J.) of the Environment and Land Court at Nairobi, the 1<sup>st</sup> respondent's claim was allowed as prayed and general damages in the amount of Kshs.53,760,000/= was ordered to be paid by the applicant to the 1<sup>st</sup> respondent, then costs.
5. The applicant was aggrieved by the decision and filed a motion dated 8<sup>th</sup> March 2024 before the same court seeking leave to allow the firm of Chesikaw & Kiprop to come on record for it; the court to stay the execution of the judgment; the process server to be summoned to be cross-examined on the question of service of summons; that the judgment and decree be reviewed and/or set aside; the applicant be granted leave to defend the claim; and the court be pleased to expunge from the record all pleadings and documents filed by the firms of Githinji Mwangi & Associates Advocates and Wetangula Adan & Company Advocates. The 1<sup>st</sup> respondent opposed the application.
6. The court heard the application and delivered a ruling on 26<sup>th</sup> September 2024. The applicant's claims that it had neither entered appearance nor filed a defence, or that it had not been served in the matter, were dismissed.
7. The applicant filed a notice of motion dated 17<sup>th</sup> October 2024 before this Court under Rule 5(2) of the Court of Appeal Rules, seeking stay of the ruling dated 26<sup>th</sup> September 2024 in respect of which it had filed a notice of appeal. The application was dismissed with costs on 12<sup>th</sup> November 2024 because the applicant had not filed a notice of appeal in respect of the judgment dated 8<sup>th</sup> February 2024.
8. On the same 12<sup>th</sup> November 2024 the applicant filed the instant application under Rule 4 of the Rules for the extension of time to file and serve a notice of appeal out of time against the judgment that was rendered on 8<sup>th</sup> February 2024. The applicant stated that it only learnt of the judgment on 5<sup>th</sup> March 2024, having not been aware of the proceedings, and by the time the 14 days allowed to file a notice of appeal had passed. It immediately filed the application dated 8<sup>th</sup> March 2024 as shown in the foregoing.
9. The application was opposed by the 1<sup>st</sup> respondent who contended that, by seeking the review of the judgment and decree, the applicant had waived its right to appeal against the judgment.
10. Considering when the impugned judgment was delivered, and when a notice of appeal was supposed to be filed, the delay in question was for about eight (8) months. It is trite that every delay, even if it is for the day, has to be explained. (See Andrew Kiplagat Chemaringo -vs- Paul Kipkorir Kibet [2018]eKLR).



11. If the applicant became aware of the impugned judgment on 5<sup>th</sup> March 2024, it was late in filing the notice of appeal by under one month. It was still obliged to seek extension of appeal, but explaining, such a short delay was easier than explaining the delay now in question.
12. The applicant chose instead to try review. When it failed it came before this Court for stay. It failed. That was when, out of desperation, I can imagine, it came before this Court in the present application. All the time, the applicant had the benefit of counsel. I do not want to say that, after failing in the quest to review the judgment, it lost the opportunity to appeal. (See Martha Wambui -vs- Irene Wanjiru Mwangi & Another [2015]eKLR). What is important to me is that the delay in question was inordinate, and the explanation for the delay is neither reasonable nor satisfactory.
13. Consequently, I will not exercise my discretion in favour of the applicant. The application dated 12<sup>th</sup> November 2024 is dismissed with costs to the 1<sup>st</sup> respondent.

**DATED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**A.O. MUCHELULE**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

