



REPUBLIC OF KENYA



Redwood Properties Limited v Kenya Anti-Corruption Commission & 3 others (Civil Application E231 of 2024) [2025] KECA 303 (KLR) (21 February 2025) (Ruling)

Neutral citation: [2025] KECA 303 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E231 OF 2024
W KARANJA, JA
FEBRUARY 21, 2025
[IN CHAMBERS]**

BETWEEN

REDWOOD PROPERTIES LIMITED APPLICANT

AND

KENYA ANTI-CORRUPTION COMMISSION 1ST RESPONDENT

WAK LIMITED 2ND RESPONDENT

SAMMY SILAS KOMEN MWAITA 3RD RESPONDENT

S.K.W. WANGILA 4TH RESPONDENT

(Being an application for extension of time to lodge and serve the memorandum and record of appeal out of time, from the judgment and order of the Environment and Land Court at Nairobi (L. Komingoi, J.) dated 28th July, 2022 in ELC Case No. 1334 of 2006)

RULING

1. Redwood Properties limited, the applicant herein, has moved this Court by an application dated 5th of April 2024 for an order of extension of time to file and serve a Memorandum and Record of Appeal against the judgment of the Honourable Lady Justice L. Komingoi given on 28th July 2022.
2. The application is predicated on the 11 grounds on its face and supported by the affidavit of Payal Pares Dave sworn on even date. The essence of the grounds and the affidavit is that being aggrieved by the said judgment, the applicant decided to appeal and filed a Notice of Appeal on 11th of August 2022. Along with the Notice of Appeal the advocates on record for the applicant wrote to the Deputy Registrar of the trial court requesting for the typed proceedings in the matter. The typed proceedings were not availed to the advocates until 14th of June 2023.



3. According to the applicant, the firm's registry underwent restructuring and the file was inadvertently misplaced. He said that the advocates were not able to reconstruct the file until 5th of April 2024 when they filed this application. The applicant deposes that the delay in filing the Memorandum and Record of Appeal was not intentional and that the mistake of counsel should not be visited on an innocent litigant. He goes on to say that the parties will not be prejudiced if the leave sought is granted, and the applicant should not be locked out of its right to appeal. He says that he has a formidable appeal with the high chances of success. He, therefore, urges the Court to allow the application and extend time as prayed.
4. The application is opposed by the 1st respondent, Kenya Anti - Corruption Commission through grounds of opposition dated 4th of February 2025. According to the first respondent there is inordinate delay in filing the Memorandum of Appeal and the Record of Appeal and no satisfactory explanation has been given as to why the documents were not filled in time. Counsel states that there is no sufficient material to demonstrate the merits of the intended appeal and asks the court to dismiss the application. Both parties filed written submissions in support of their rival positions which submissions I have considered along with the authorities cited and the applicable law.
5. In its submissions the appellant reiterates that the delay was not inordinate and it was not intentional and further that they filed this application immediately after getting the proceedings from the registrar of the trial court. It continues to say that the error was genuine and excusable and that they should not be shut out from the right of appeal particularly in view of the importance of the subject matter of the appeal. They say that their appeal is not frivolous and it requires the Court to give interpretation to the evidentiary burden required under sections 107 to 109 of the Evidence Act they therefore urge the court to allow the application.
6. On its part, the first respondent opposes the application saying that the delay was inordinate and no sufficient explanation has been given for the delay. The respondent states that this application was filed in excess of eight months after the Record of Appeal was due for filing and submits, therefore, that the delay was inordinate. The first respondent maintains that the reasons given for the delay are not plausible and also that there is insufficient material to support their claim that they have an appeal that is not frivolous. Both parties filed their lists of authorities in support of their opposing positions.
7. Under rule 4 of the Court of Appeal Rules -

“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 doing any act authorized or required by these Rules, whether before or after 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.”
8. The discretion under Rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance. In Henry Mukora Mwangi v Charles Gichina Mwangi Civil Application No. Nai. 26 of 2004, this Court held:-

“It has been stated time and again that in an application under rule 4 of the Rules the learned single Judge is called upon to exercise his discretion which discretion is unfettered. It may be



appropriate to re-emphasize this principle by referring to the decision in *Mwangi v Kenya Airways Ltd.* [2003] KLR 486 in which this Court stated:-

“Over the years, the Court has, of course 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 the 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.”

9. Does this application meet the above threshold? I note that the Notice of Appeal was filed and served on time and the appeal cannot, therefore, be said to be an afterthought. It is conceded that there was a delay of about 8 months to file this application after the proceedings were received from the trial court. The reason given for the delay is that due to some restructuring of the advocates on record for the applicant’s office, the file was misplaced.
10. I note that whether the delay is inordinate or not depends on the nature of the case and the circumstances causing the delay. Whereas in some cases a delay of 8 months may be considered inordinate, courts have countenanced delays of upto 2 years.
11. In this case, given the nature of the subject matter of the appeal, I am persuaded that the applicant could not have advertently ignore the matter. I find the reason for the delay plausible. I have also considered the subject matter of the appeal as can be deciphered from the material placed before me. The applicant lost its property and, in my view, it should not be dislodged from the seat of justice without being given an opportunity to be heard on appeal.
12. I also hold the view that the issue of interpretation of sections 107-109 of the *Evidence Act* pertaining to the evidentiary burden in these matters is not a frivolous one and will be important not just to the parties herein but also to other matters of similar nature. I also do not see what prejudice will be occasioned to the respondents if the appeal is heard.
13. In the circumstances, I exercise my discretion in favour of the applicant and allow the application with each party being ordered to bear its own costs. As the record of appeal is ready, I order that the same be filed and served on the parties within 14 days from the date hereof, failing which the leave granted will stand vacated. It is so ordered.

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

W. KARANJA

JUDGE OF APPEAL

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

signed

DEPUTY REGISTRAR.

