



**Excellent Logistics Limited v Ng'ang'a & another (Civil Application  
E321 of 2024) [2025] KECA 514 (KLR) (21 March 2025) (Ruling)**

Neutral citation: [2025] KECA 514 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E321 OF 2024  
M NGUGI, JA  
MARCH 21, 2025**

**BETWEEN**

**EXCELLENT LOGISTICS LIMITED ..... APPLICANT**

**AND**

**JOYCE WAIRIMU NG'ANG'A ..... 1<sup>ST</sup> RESPONDENT**

**SAMUEL MAINA MUKUNDI ..... 2<sup>ND</sup> RESPONDENT**

*(Being an application for leave to file a notice of appeal and  
record of appeal out of time) in HCCC NO. 394 of 2013)*

**RULING**

1. In the application dated 28<sup>th</sup> June 2024, the applicant asks this Court to extend time to allow it to file a notice of appeal and record of appeal out of time against the judgment and decree of the High Court (A.N. Ongerij.) dated 2<sup>nd</sup> April 2024; and that the notice of appeal attached to the application be filed (sic) upon payment of the requisite fee. The application is brought under Article 159 (1), (2)(a) and (b), section 3, 3A and 3B of the [Appellate Jurisdiction Act](#), and rules 4, 43, 44(1), 45(1)a and 47 of the [Court of Appeal Rules](#).
2. The grounds on which the application is based are set out on its face and in the affidavit in support of the application sworn by the applicant's director, Fredrick Ndungu Ngugi. The applicant avers that judgment in Civil Case No. 394 of 2013 was delivered on 2<sup>nd</sup> April 2024. It was not, however, until 11<sup>th</sup> June 2024 that it received an email from its previous advocates, MNM Advocates LLP, informing it that judgment had been entered against it on 2<sup>nd</sup> April 2024. It had written two letters to its advocates but did not receive a response, so it took the initiative to follow up the matter with the court registry and also appointed its new firm of advocates, Osoro Omwoyo & Co. Advocates, on 28<sup>th</sup> June 2024, and a consent between the advocates was filed to enable the new firm come on record for the applicant.



3. The applicant avers that upon perusing the trial court file, its new advocates established that its previous advocates had not filed a notice of appeal against the judgment. Its new advocates therefore filed the present application for leave to file the notice of appeal and the appeal out of time. The applicant asserts that the judgment of the trial court is not based on sound law or evidence, and the award is excessive in the circumstances. The applicant avers that the delay in filing its notice and record of appeal is attributable to its former advocates. It had instructed its new advocates and filed the present application on the same day, and it should be granted leave to file the notice of appeal and record of appeal out of time.
4. The respondents oppose the application through an affidavit sworn by the 1<sup>st</sup> respondent, Joyce Wairimu Ng'ang'a, on 9<sup>th</sup> February 2025, and grounds of opposition of the same date. Whilst challenging the authenticity of the documents relied on by the applicant, the respondents contend that the applicant has not given sufficient reasons for the delay in filing the notice and record of appeal. They contend that granting the extension of time will frustrate the execution process and significantly prejudice them from enjoying the fruits of their judgment; and that the delay was not caused by exceptional circumstances and the applicant is not deserving of the Court's discretion to extend time for filing the notice of appeal.
5. The applicant filed submissions dated 7<sup>th</sup> February 2025 while the respondent's submissions are dated 10<sup>th</sup> February 2025.
6. I have considered the application, the affidavit in support and opposition thereto, the respondents' grounds of opposition and the submissions of the parties. While the parties were served with the hearing notice on 30<sup>th</sup> January 2025 indicating that the matter would be heard on 11<sup>th</sup> February 2025, it was not until the 9<sup>th</sup> and 10<sup>th</sup> February 2025 respectively that the respondents filed their replying affidavit and submissions. In its submissions dated 7<sup>th</sup> February 2025, the applicant operates from the position, correct as at that date, that the respondents had not filed a response to its application. As I address my mind to the question whether I should exercise discretion in favour of the applicant, I must reiterate that it is prejudicial to a party, and should not be condoned, for its opponent to file responses just prior to a hearing, when the opposing party has no opportunity to respond.
7. Rule 4 of this Court's Rules grants the Court discretion to extend time for the doing of any act under the Rules. The time line for filing a notice of appeal is limited, under rule 77, to 14 days after the date of the judgment sought to be appealed from. The judgment in this case was delivered on 2<sup>nd</sup> April 2024, so the notice of appeal should have been filed within 14 days of that date. It was not, the applicant filing this application for extension of time on 28<sup>th</sup> June, 2024, 87 days later and 73 days after expiry of the statutory period for filing of a notice of appeal.
8. In considering an application under rule 4, which vests discretion in the Court with regard to extension of time, the Court is required to consider the length of the delay, the reasons for the delay, (possibly) the chances of the appeal succeeding, and the prejudice likely to be suffered by the respondent if the orders sought are granted-see *Leo Sila Mutiso v Rose Hellen Wangui Mwangi* (1999)2 EA 231 and *Nicholas Kiptoo Arap Korir Salat vs Independent Electoral & Boundaries Commission & 7 others* [2014] eKLR.
9. The applicant admits that there was delay in filing its notice of appeal. It lays the blame for this failure on its previous advocates, whom it avers it wrote two letters to, dated 11<sup>th</sup> and 24<sup>th</sup> June 2024 respectively, which it has exhibited. The applicant wrote the first letter after receiving an email on 11<sup>th</sup> June 2024 informing it that judgment was entered against it on 2<sup>nd</sup> April 2024. I note that the email dated 11<sup>th</sup> June 2024 was sent to the applicant's director by one Grace Mwangi, Claims, Legal Department, Kenya Orient Insurance Company Limited. Annexures 'FNN5', 'FNN6' and 'FNN7',



the latter of which is addresses to Ms. Grace Mwangi, inquiring about the notice of appeal. The respondents question the authenticity of the correspondence, but given the timing of their response and the obvious inability of the applicant to respond thereto, I will disregard the challenge. On the face of it, the applicant made every effort, once it learnt of the delivery of the judgment, to set in motion the process of filing its notice and record of appeal.

10. Consequently, on the basis of the material before me, I am satisfied that the failure by the applicant to meet the timelines set by the Rules was due to inaction on the part of its former advocates. The correspondence indicates that the applicant was represented by counsel; that information was not relayed to it about the judgment till 11th June 2024, when its insurer indicated that it would meet only part of the Kshs. 22 million awards against it. The applicant issued instructions for filing of the notice of appeal and record of appeal, which was not done. In any event, by June 2024, the statutory timelines had already lapsed. While there was a long delay in seeking leave to file the notice of appeal, the applicant has explained it to my satisfaction.
11. Accordingly, I find the application dated June 28, 2024 to be meritorious, and it is hereby allowed. The applicant shall file and serve its notice of appeal within 14 days from the date hereof, and the record of appeal within 45 days of filing its notice of appeal.
12. There shall be no order as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF MARCH, 2025.**

**MUMBI NGUGI**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

