



**Kenya United Steel Company (2022) Limited v Ahmed & another (Civil Appeal (Application) E141 of 2022) [2025] KECA 854 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KECA 854 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MOMBASA  
CIVIL APPEAL (APPLICATION) E141 OF 2022  
F TUIYOTT, JA  
MARCH 7, 2025**

**BETWEEN**

**KENYA UNITED STEEL COMPANY (2022) LIMITED ..... APPELLANT**

**AND**

**AHMED MOHAMED AHMED ..... 1<sup>ST</sup> RESPONDENT**

**AHMED MOHIDDIN ..... 2<sup>ND</sup> RESPONDENT**

*(Being an application for extension of time to file an application to strike out an appeal against the Judgment of the Environment and Land Court at Mombasa (A. Omollo, J.) delivered on 31st October, 2017 In Mombasa ELC Case No. 470 of 2011)*

**RULING**

1. Kenya United Steel Company (2022) Limited, the appellant, filed a notice of appeal dated 10<sup>th</sup> November, 2017 on 14<sup>th</sup> November, 2017 at the Environment and Land Court Registry, against the decision of A. Omollo J. in Mombasa ELC, Civil Suit No. 470 of 2011 dated 31<sup>st</sup> October, 2017. Subsequently, the appellant filed a Record of Appeal dated 16<sup>th</sup> December, 2022 on 17<sup>th</sup> December 2022.
2. Ahmed Mohiddin, the 2<sup>nd</sup> respondent, by a notice of motion dated 11<sup>th</sup> October, 2024, seeks leave of this Court to file an application to strike out the record of appeal out of time. In support of the application is his supporting affidavit of even date where he avers that he never participated in the proceedings in the superior court as he was never served with the summons therein. In addition, that the notice of appeal was similarly never served upon him and asserts the exclusion to be deliberate. He contends that the appellant ought to have filed an ex parte application to this Court within seven (7) days after lodging the said notice to get directions of non-service upon him for not having participated in the proceedings in the superior court below. Again, that the record of appeal dated 16<sup>th</sup> December, 2022 ought to have been filed within 60 days from the date of service/filing of the notice of appeal



which falls on 14<sup>th</sup> January, 2018 but was instead filed five (5) years out of the time prescribed by statute (perhaps rules of this Court) and never served upon him. He contends that he shall suffer prejudice if the appellant is allowed to disregard the rules of the court and proceed with the hearing of the appeal that was filed out of time and without leave of court. Thus, he urges this Court to grant him leave to file an application for striking out the appeal herein out of time as the application ought to have been filed within thirty (30) days from the date of service of the record of appeal but since the appellant failed to serve him, he was never aware of it.

3. Supporting the application is the replying affidavit of the 1<sup>st</sup> respondent, Ahmed Mohamed Ahmed, sworn on 11<sup>th</sup> December, 2024. The 1<sup>st</sup> respondent avers that the appellant filed the notice of appeal on 14<sup>th</sup> November, 2017 and the record of appeal was filed five (5) years later on 16<sup>th</sup> December, 2022 and the same was filed out of time without leave of the court. He supports the 2<sup>nd</sup> respondent's application for leave to file an application for striking out the said appeal out of time and reveals that he, too, has filed an application seeking to strike out the notice of appeal, pending for determination.
4. The appellant opposes the application in a replying affidavit sworn on 5<sup>th</sup> November, 2024 by Abid M. Alam, the managing director of the appellant. He contends that an application to strike out the notice of appeal or appeal cannot be brought after expiry of 30 days after service of the notice or record of appeal. He deposes that the record of appeal dated 16<sup>th</sup> December, 2022 was filed on 17<sup>th</sup> December, 2022 and served immediately (seemingly on the 1<sup>st</sup> respondent) and there is no room under rule 86 of this Court's Rules to extend or enlarge time to file the application to strike out the appeal. It is his further disposition that the suit in the superior court was instituted by the 1<sup>st</sup> respondent against the appellant and the 2<sup>nd</sup> respondent, and the 2<sup>nd</sup> respondent opted not to enter appearance and participate in the proceedings despite service and knowledge of the suit. He argues that the 2<sup>nd</sup> respondent, having not filed a notice of address, cannot just barge in and seek to strike out the appeal on account of his own non-appearance. As for the delay in filing the record of appeal, he refers this Court to the letter requesting for typed proceedings and the certificate of delay issued by the court prior to filing the record of appeal and contends that the same was filed in compliance with rule 84 and served on the 1<sup>st</sup> respondent within 30 days of delivery of the judgment.
5. I have reflected on the material before me which includes the submissions filed by the appellant.
6. The discretion granted to Court by Rule 4 of this Court's Rules to extend time must be exercised judiciously. Extension of time is not a right of a party but an equitable remedy available to a deserving party, at the discretion of the Court. The Court in weighing whether or not to extend time will consider; the length of the delay; that the delay is explained to the satisfaction of the court; whether there will be prejudice suffered by the respondent if extension is granted; whether the application is brought without undue delay; and in certain circumstances, public interest. See *Fakir Mohamed v Joseph Mugambi & 2 others* [2005] eKLR.
7. Rule 86 on striking out of notice of appeal or appeal reads;
  - a. that no appeal lies; or



- b. that some essential step in the proceedings has not been taken or has not been taken within the prescribed time:

“Provided that an application to strike out a notice of appeal or an appeal shall not be brought after the expiry of thirty days after the date of service of the notice of appeal or record of appeal, as the case may be.”

8. The 2<sup>nd</sup> respondent does not say when he became aware of the notice of appeal or of the appeal. The information is critical in an application of this nature because only then can the judge assess whether the length of delay is excusable or inordinate. In the circumstances of this case, where the appeal was filed on 17<sup>th</sup> December 2022, it is not readily apparent whether or not the delay in bringing the motion, about 20 months later, is excusable when the 2<sup>nd</sup> respondent does not disclose when he first became aware of the existence of the appeal. This omission is fatal to the application.
9. In the end, the Notice of Motion dated 11<sup>th</sup> October, 2024 is dismissed. Costs to the appellant.

**DATED AND DELIVERED AT MOMBASA THIS 7<sup>TH</sup> DAY OF MARCH, 2025.**

**F. TUIYOTT**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

