



REPUBLIC OF KENYA



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Roopra t/a Motorways Constructions v Shreeji Enterprises (K) Limited (Civil Application E477 of 2024) [2025] KECA 680 (KLR) (11 April 2025) (Ruling)

Neutral citation: [2025] KECA 680 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E477 OF 2024**

SG KAIRU, JA

APRIL 11, 2025

[IN CHAMBERS]

BETWEEN

**NARINDER SINGH ROOPRA T/A MOTORWAYS
CONSTRUCTIONS APPLICANT**

AND

SHREEJI ENTERPRISES (K) LIMITED RESPONDENT

(Being an application for extension of time to file a Notice of Appeal and apply for a copy of proceedings from the Judgment of the High Court of Kenya at Nairobi (Mabeya, J.) dated 14th April 2023 in HCCC. No. 781 of 2003)

RULING

1. In his application dated 19th September 2024, the applicant, Narinder Singh Roopra t/a Motorways Constructions, has moved the Court under Rule 4 of the [Court of Appeal Rules](#) seeking orders: that the time for filing a notice of appeal against the judgment of the High Court delivered on 14th April 2023 in Civil Case No. 781 of 2003 be extended up to 19th July 2024; that the time for applying for a copy of the proceedings in that suit under the proviso to rule 84 of the [Court of Appeal rules](#) be extended up to 19th July 2024; and that the notice of appeal dated 19th July 2024 and the letter applying for a copy of the proceedings dated 19th July 2024 be deemed as duly filed.
2. The application is supported by the applicant's affidavit and further affidavit and was canvassed before me on 28th January 2025 by learned counsel, Mr. Sarvia, who orally highlighted the applicant's written submissions dated 22nd November 2024 and further submissions dated 21st January 2025. Although the advocates for the respondent had been duly served with notice of hearing, there was no appearance for the respondent during the hearing of the application. However, the respondent in opposition to



the application filed a replying affidavit sworn by Soni Dhaval, a director of the respondent, as well as the respondent's written submissions dated 24th January 2025.

3. I have considered the application, the affidavits, and the rival submissions. An application under Rule 4 of the *Court of Appeal Rules*, such as this, invites the exercise of discretion by the Court. The principles guiding the Court in considering such application are well known. Waki, JA. stated the principles in the case of *Fakir Mohamed v. Joseph Mugambi & 2 Others* [2005] eKLR as follows:

“The exercise of this Court's discretion under Rule 4... is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance-are all relevant but not exhaustive factors: See *Mutiso v Mwangi* Civil Appl. NAI. 255 of 1997 (UR), *Mwangi v Kenya Airways Ltd* [2003] KLR 486, *Major Joseph Mwereri Igweta v. Murika M'Ethare & Attorney General* Civil Appl. NAI. 8/2000 (UR) and *Murai Wainaina* (No 4) [1982] KLR 38.”

4. More recently, the Supreme Court of Kenya in the case of *Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 Others*, Supreme Court Application No. 16 of 2014 [2014] eKLR pronounced that 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; that the party seeking extension of time has the burden to lay a basis to the satisfaction of the court; that extension of time is a consideration on a case to case basis; and that delay should be explained to the satisfaction of the court. Other considerations include whether there will be prejudice suffered by the respondents if the extension is granted and whether the application is brought without undue delay. Public interest is also a relevant consideration.
5. In effect, although the Court has unfettered discretion under Rule 4 of the *Court of Appeal Rules*, that discretion should be exercised judicially. Each case must be considered on its own facts. What then are the circumstances in this case?
6. Based on the material presented before me, the respondent filed suit before the High Court in December 2003 being, Civil Case No. 781 of 2003, seeking judgment against the applicant for Kshs.6,500,000.00 in respect of the balance of the purchase price of three lorries.
7. The applicant denied the claim in its statement of defence and filed a counterclaim for a refund of deposit of Kshs.1,000,000.00; special damages of Kshs. 549,000.00; and storage charges at the rate of Kshs.1,000.00 per day per vehicle.
8. The hearing of the suit, which began before Maureen Odero, J. was concluded by Mabeya, J. on 16th February 2023 after counsel for both parties highlighted their respective submissions before the Judge. On that day, judgment was reserved for delivery on notice.
9. It is the applicant's case that no notice of delivery of the judgment was given. The applicant only became aware that judgment had been delivered on 14th April 2023, when on 19th July 2024, the applicant's advocates were served with the respondent's Party and Party Bill of Costs and Notice of Taxation. Immediately on becoming aware, the applicant's advocates filed a Notice of Appeal on the same day (19th July 2024) and at the same time applied, by letter to the High Court, for a copy of the proceedings.



10. Subsequently, the applicant filed the present application dated 19th September 2024 and later, after receiving the typed proceedings from the High Court, filed his Memorandum and Record of Appeal, on 13th December 2024, being Civil Appeal No. E974 of 2004.
11. The question is whether the delay involved is satisfactorily explained. It is not in dispute that upon conclusion of submissions on 16th February 2023, the learned judge of the High Court indicated that judgment would be delivered on notice. The applicant states that he only became aware that judgment had been delivered on 14th April 2023 on 19th July 2024 when the applicant's advocates were served with the respondent's Bill of Costs.
12. The period between 16th February 2023, when the hearing before the High Court was effectively concluded, and 19th July 2024, when the applicant's advocates became aware that judgment had in fact been delivered, is a period of over 17 months (slightly over one year and five months). The respondent says that the judgment was published in the Kenya Law Reports and the applicant's advocates indicate that that is where they ultimately got it from. I do not think anything turns on that. While appreciating that the obligation was on the High Court to ensure that notice of delivery of judgment was given to the parties, what is somewhat concerning is that for over 17 months after the hearing was concluded, the applicant does not appear to have made any enquiries to, or follow up with the High Court, to establish when judgment would be delivered.
13. Even if I was to disregard that, there is then the period between 19th July 2024, when the applicant's advocates state they became aware that judgment had been delivered (upon being served with the respondent's Bill of Costs) and 19th September 2024, when the present application was made. That is a delay of two months. That delay is not explained. On enquiring during the hearing of the application as to why the application was not filed sooner, Mr. Sarvia pointed out that it was during the court vacation. It is however not clear, respectfully, how that prevented the filing of the application. The applicant was able, on 19th July 2024, to file a notice of appeal and to apply for a copy of the proceedings. It is not clear why the present application could not have been filed at the same time.
14. It is also noteworthy that it is over twenty years since the suit was filed.
15. All in all, I am not persuaded that this is a proper case for the exercise of the Court's discretion in favour of the applicant. Consequently, the application dated 19th September 2024 is declined. It is accordingly dismissed with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF APRIL, 2025.

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

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

signed

DEPUTY REGISTRAR.

