



**Taj Mall Limited v Cobra Security Limited (Civil Application  
E172 of 2024) [2024] KECA 619 (KLR) (24 May 2024) (Ruling)**

Neutral citation: [2024] KECA 619 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E172 OF 2024**

**P NYAMWEYA, JA**

**MAY 24, 2024**

**BETWEEN**

**TAJ MALL LIMITED ..... APPELLANT**

**AND**

**COBRA SECURITY LIMITED ..... RESPONDENT**

*(Being an application for extension of time for lodging appeal from the High Court at Nairobi (A. N. Ongeru, J) delivered on 1st March 2024 in HCCA No. 725 of 2019)*

**RULING**

1. Taj Mall Ltd, the Applicant herein, filed an application by way of a Notice of Motion dated 5<sup>th</sup> April 2024, in which they seek extension of time to file an appeal out of time against a judgment delivered on 1<sup>st</sup> March 2024 by the High Court at Nairobi (A. Ongeru J) in HC Civil Appeal no 725 of 2019 - *Taj Mall Limited v Cobra Security Limited*, in which its appeal was dismissed. Further, that the Notice of Appeal dated 4<sup>th</sup> April 2024 and lodged by the Applicant on 5<sup>th</sup> April 2024 at the High Court of Kenya at Nairobi be deemed as properly and duly filed, and that the costs of the application do abide the result of the intended appeal.
2. The application is supported by an affidavit sworn on 5<sup>th</sup> April 2024 by Juliet Naluzzi, the Applicant's Legal Officer. The Applicant's case is that the Notice of Appeal should have been lodged on or before 18<sup>th</sup> March 2024, and that the delay of fifteen (15) days in lodging of the Notice of Appeal was not deliberate but occasioned by extraneous circumstances, namely that the Applicant's Director had travelled to India for a religious pilgrimage at the time when the High Court decision was delivered. The Applicant further explained that attendants of the said pilgrimage are not allowed to use any electronic gadgets, and the advocate handling the matter was not able to communicate with the Applicant's Director in good time to relay information about the High Court decision and to seek further instructions. By the time contact was made with the Director, the period within which to lodge



the notice of appeal had lapsed. The Applicant averred that its appeal is arguable and no prejudice will be occasioned upon the Respondent if time is extended.

3. Cobra Security Limited, the Respondent herein, opposed the application, through a replying affidavit sworn on 17<sup>th</sup> May 2024 by David Kamau Githinji, the Respondent's advocate. It was averred therein that it is trite law, by the authority of the Supreme Court of Kenya in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* (2014) eKLR, that by filing an appeal out of time before seeking extension of time, and subsequently seeking the court to extend time and recognize such "an appeal" is tantamount to moving the court to remedy an illegality, and that such a filing renders the document a nullity. Further, that no cogent reason has been given for the delay of filing the Notice of Appeal, and that the absence of the instructing client without more, cannot be sufficient ground. Lastly that no efforts were shown to have been employed to seek instructions from the said Director, either through phone or e-mail or such other means.
4. The principles governing the exercise of the discretion to extend time under Rule 4 of the *Court of Appeal Rules* were well stated in the case of *Leo Sila Mutiso v Rose Hellen Wangare Mwangi*, Civil Application no Nai 255 of 1997 (ur) as follows:

"It is now well stated 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"
5. Rule 77(2) of the *Court of Appeal Rules of 2022* in this respect requires that a Notice of Appeal is lodged within fourteen days of the decision intended to be appealed against. It is not in dispute that the Applicants did not file a Notice of appeal within the required timelines, and the relevant period of delay that requires to be explained is the one between delivery of the impugned ruling on 1<sup>st</sup> March 2024, and the date of lodging of this application on 5<sup>th</sup> April 2024. The Applicant's reason for the delay was that it was caused by the travel of their Director to India, and annexed a copy of the air ticket as evidence. I note from the said air ticket that the alleged travel to India was on 8<sup>th</sup> December 2023, almost three months before the delivery of the impugned judgment on 1<sup>st</sup> March 2023, and four months before the filing of the instant application. I therefore do not consider this evidence to be an adequate explanation for the delay. In the absence of any other explanation, I find that the delay is inexcusable in the circumstances and inordinate.
6. The Applicant does not consequently merit the exercise of this Court's discretion. I accordingly dismiss the Applicant's Notice of Motion application dated 5<sup>th</sup> April 2024 with costs to the Respondent.
7. Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF MAY 2024.**

**P. NYAMWEYA**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed



**DEPUTY REGISTRAR**

