



**APA Insurance Limited v Mwangi (Civil Application
E053 of 2024) [2024] KECA 954 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 954 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E053 OF 2024
MA WARSAME, JA
JULY 26, 2024**

BETWEEN

APA INSUARANCE LIMITED APPLICANT

AND

ELIJAH GATHOGO MWANGI RESPONDENT

(An application for extension of time to file a notice of appeal, against the ruling of the High Court at Bomet (Korir J. as he was then) dated 12th March, 2024 in HCCCA No. 4 OF 2018)

RULING

1. In the application before me dated 5th June 2024, the applicants are seeking orders inter alia:-That the applicant be granted leave to file and serve the Notice of Appeal attached out of timeThe Honourable Court be pleased to grant a stay of proceedings in Bomet CMCC No.55 of 2016- Nelson Kerore Karandi & Another vs. Radha Motors LTD and Sotik Cmcc No. 51 of 2016 Elizabeth Akinyi Onyango Vs Radha Motors LTD pending the lodgment, hearing and determination of the appeal to be filed in the Court of Appeal of Kenya at Nakuru.
2. The application is supported by the grounds stated on the face of the application and an affidavit sworn by the applicant’s Advocate, Dancan Otieno who deponed that:
 - i. On 24th January 2023, Bomet HCCC No 4. of 2018 was dismissed for want of prosecution
 - ii. The applicant filed an application dated 17th April 2023 seeking to reinstate the suit but the same was dismissed by the High Court(Korir J.) on 12th March 2024
 - iii. The applicant’s Advocate informed the applicant of the ruling and sought instruction on appeal via a letter and an email dated 13th March 2024



- iv. The email/letter only came to the attention of the applicant on 4th April 2024 and that is when they furnished the advocate with instructions to appeal
 - v. The 14 day period had lapsed necessitating the current application
 - vi. The delay in filing the Notice of Appeal was not a deliberate act of the applicant but due to an inadvertence beyond the control of the applicant.
 - vii. The inadvertent failure of a party should not render civil proceedings incurable
 - viii. Justice should be administered without due regard to procedural technicalities
3. Rule 4 of the *Court of Appeal Rules* (the Rules) grants this Court unfettered discretion to extend time which discretion ought to be exercised judiciously. In considering such an application, the Court is required to look at the length of the delay; reason for the delay; chances of the intended appeal succeeding and the degree of prejudice, if any, which would be occasioned to the respondent. See *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1977] eKLR.
 4. Taking into account the above parameters, I do find that no plausible explanation has been given for the delay of 85 days in filing the notice of appeal and the instant motion.
 5. It is obvious that the applicant's counsel was aware of the judgment from the day it was delivered and tried to inform the applicant via mail and by a letter delivered to the applicant dated 13th March 2024. The applicant's explanation for the failure to file the notice of appeal within the prescribed time is that, it was an inadvertent failure.
 6. However, the inadvertence has not been explained and the assertion that the email sent by the Advocate was not read on time by the applicant company is hearsay evidence and cannot stand.
 7. Similarly, there is no explanation whatsoever as to why the advocate, after being instructed to proceed with the appeal on 4th April 2024, failed to do so and only filed the notice of appeal on 5th June 2024, a period of two months.
 8. In order to exercise discretion in favour of the applicant, I am entitled to look at the conduct of the parties in the entire suit. In the circumstances of this case and given that the case before the trial court was dismissed for want of prosecution and inaction by the applicant, I am persuaded that this application is unmerited, and the applicant has not offered any reason to justify exercise of discretion in its favour. No orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JULY, 2024.

M. WARSAME

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

