



**Doorsun Consulting Limited v Kenya Pipeline Company Limited (Civil Appeal (Application) E302 of 2024) [2024] KECA 1686 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1686 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) E302 OF 2024  
M NGUGI, JA  
NOVEMBER 22, 2024**

**BETWEEN**

**DOORSUN CONSULTING LIMITED ..... APPLICANT**

**AND**

**KENYA PIPELINE COMPANY LIMITED ..... RESPONDENT**

*(Being an application for stay of execution and orders for enlargement of time within which to file an appeal against the judgment and decree of the High Court (Hon. D.S. Majanja J.) dated 30th May, 2023)*

**RULING**

1. The application dated 12<sup>th</sup> April 2024 is brought under section 3A (1) and (2) of the [Appellate Jurisdiction Act](#) and rules 4, 5(2)(b), 43, 44. and 49 of the Court of Appeal Rules, 2022. It is an omnibus application, seeking two substantive orders. First, that this Court be pleased to grant the applicant an order of stay of execution of the decree from the judgment of the High Court (D.S. Majanja J.) dated 30<sup>th</sup> May 2023 in Milimani Commercial & Tax Division Comm Case No. E073 of 2020. The applicant seeks, secondly, an order for extension of time within which to file an appeal, and leave to file an appeal against the said judgment and orders.
2. Under rule 55(2) of the Rules of this Court, as a single judge of the Court, I do not have jurisdiction, to hear and determine an application for stay of execution under rule 5(2)(b) of the rules of this Court. I will therefore confine myself to the second limb of the application, being an application for extension of time to file an appeal out of time against the decision of the trial court.
3. The application is based on the grounds set out on its face and is supported by an affidavit sworn by David Kiiru, its Managing Director, on 12<sup>th</sup> April 2024. The applicant avers that in its judgment dated 30<sup>th</sup> May 2023, the High Court dismissed its suit with costs to the respondent. It filed a notice of



- appeal dated 12<sup>th</sup> June 2023 and wrote a letter dated 14<sup>th</sup> June 2023 requesting for certified copies of the proceedings, which it lodged physically at the registry but also uploaded on the court's e-filing portal.
4. It further avers that though the request for typed proceedings was lodged physically at the High Court, it was not acknowledged. The applicant avers that it was issued with a copy of the certified decree on 20<sup>th</sup> June 2023 and a certified judgment on 30<sup>th</sup> June 2023. It states that its letter requesting for the proceedings was not successfully uploaded on the e-filing portal either due to system error or some other reason outside its advocate's control. It was therefore not deemed as having been properly uploaded or submitted, thus requiring the applicant to re-upload the request for proceedings, this time successfully, on 25<sup>th</sup> August 2023. It was then issued with a certified copy of typed proceedings on 14<sup>th</sup> September 2023.
  5. The applicant avers that it believed that the period of delay would be excluded from the computation of time and so assumed that it was within the required timelines. It states that the High Court Registry, however, declined to issue a certificate of delay, indicating that it was not responsible for the initial failed upload on the e-filing portal. The applicant avers that it was compelled to file an application before the High Court seeking to rectify the position, and the High Court, in its ruling dated 8<sup>th</sup> April 2024, directed the Deputy Registrar to issue a certificate of delay, which was issued on 9<sup>th</sup> April 2024.
  6. The appellant avers that as a result of these delays, its intended appeal has been overtaken by the passage of time and can only be filed with the leave of this Court. It contends that the intended appeal raises cogent triable issues with high chances of success and it is in the interest of justice that its application be heard, and the respondent will not suffer any prejudice if the application is allowed.
  7. The respondent opposes the application and has filed a replying affidavit sworn on 11<sup>th</sup> September 2024 by Laban Kosgey, the Chief Information Technology Officer of the respondent. Mr. Kosgey deposes that following the dismissal of the applicant's suit, the applicant served the respondent with a notice of appeal on 13<sup>th</sup> June 2023. It did not, however, and has not, to date, served the respondent with the letter bespeaking typed proceedings.
  8. It avers that the applicant had 60 days from the date it filed the notice of appeal to file a record of appeal, failing which the notice of appeal would be deemed withdrawn. It is the respondent's contention that the 60-day period expired on 14<sup>th</sup> August 2023, without the applicant filing an appeal; that the applicant then filed an application on 11<sup>th</sup> October 2023 seeking an order directing the Deputy Registrar to issue a certificate of delay, accounting for the period between 14<sup>th</sup> June 2023 to 14<sup>th</sup> September 2023, which application was allowed and a certificate issued on 9<sup>th</sup> April 2024. The respondent avers that it was only after being served with this application on 28<sup>th</sup> May 2024 that it discovered that an appeal had been filed, and it therefore raised a preliminary objection seeking to have both the appeal and the application struck out.
  9. The respondent further avers that the applicant cannot rely on the certificate of delay as it did not serve the letter requesting for typed proceedings on the respondent. It contends, further, that in any event, the certificate of delay issued to the applicant only covers the period from 14<sup>th</sup> June 2023 to 14<sup>th</sup> August 2023, while the appeal was filed on 12<sup>th</sup> April 2024, 5 months outside the statutory timeline. The respondent avers that even if the Court was to allow the application, it would not cure the defect of failing to serve the respondent with the letter requesting typed proceedings, and the appeal would still be out of time as the period between 13<sup>th</sup> June 2023 and 13<sup>th</sup> September 2023 is unaccounted for.
  10. The applicant filed submissions dated 11<sup>th</sup> September 2024.



These submissions, however, are confined to the applicant's prayer for stay of execution and have not addressed the question of leave to appeal out of time. The respondent did not file any submissions with respect to the application.

11. I have considered the application and the averments of the parties. Rule 4 of this Court's Rules grants an unfettered discretion to the Court to extend time for the doing of any act prescribed under the Rules. In considering an application for extension of time, the Court will consider the length of the delay, the reasons for the delay, (possibly) the chances of the appeal succeeding and, finally, the prejudice likely to be suffered by the Wangari Mwangi (1999) 2 EA 231 in which this Court stated:

“It is now well settled 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.”

12. The judgment that the applicant seeks to appeal from was delivered on 30<sup>th</sup> May 2023. Aggrieved by the decision, the applicant, filed a notice of appeal dated 12<sup>th</sup> June 2023. They then applied for certified copies of the proceedings by their letter dated 14<sup>th</sup> June 2023. The applicant states that its attempt to upload the letter requesting for the proceedings was not uploaded onto the judiciary e-portal. It re-uploaded the letter on 25<sup>th</sup> August 2023, and was issued with a certificate of delay by the High Court in a ruling dated 8<sup>th</sup> April 2024 pursuant to its application in that regard.

13. The pleadings before me indicate that the applicant filed its notice of appeal on 12<sup>th</sup> June 2024, within time as provided under rule 77 of this Court's Rules. Under rule 84, the applicant was required to file its record of appeal within 60 days of filing its notice of appeal. This rule provides that:

84.

- (1) Subject to rule 118, an appeal shall be instituted by lodging in the appropriate registry, within sixty days after the date when the notice of appeal was lodged—
- (a) a memorandum of appeal, in four copies; (b) the record of appeal, in four copies;
  - c. the prescribed fee; and
  - d. security for the costs of the appeal:

Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with sub-rule (2) within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.

- (2) An appellant shall not be entitled to rely on the proviso to sub-rule (1) unless the appellant's application for such copy was in writing and a copy of the application was served upon the respondent. (Emphasis added).



14. The applicant filed its notice of appeal on time. It uploaded a request for proceedings on June 14 2023; had to re-upload the request on 25<sup>th</sup> August 2023; and received the certificate of delay pursuant to the orders of the High Court on 8<sup>th</sup> April 2024. So far so good. The respondent deposes, however, and the applicant does not dispute this, that it did not, as required under rule 84(1), copy the letter requesting for the proceedings to the respondent. Indeed, a perusal of the letter dated 14<sup>th</sup> June 2023 indicates that it was copied to the applicant's Managing Director, but not to the respondent's counsel.
15. That being the case, could the applicant benefit from the certificate of delay, either issued by the registry or upon an order of the High Court? Put differently, does the certificate of delay issued pursuant to an order of the High Court override the requirements of rule 84(2)? In my view, it does not. Since the applicant did not comply with the requirement for service on the respondent of the letter bespeaking proceedings under rule 84(1), it was not entitled to benefit from the certificate of delay under rule 84(2).
16. In the circumstances, not having complied with the requirements of rule 84(1) and (2), I find that the applicant is not entitled to the exercise of this Court's discretion under rule of this Court's Rules. I therefore find no merit in the application dated 12<sup>th</sup> April 2024, and it is hereby dismissed with costs to the respondent.

**DATED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2024**

**MUMBI NGUGI**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

