



**Ruhangi v Registrar of Companies & 2 others (Civil Appeal (Application)
E228 of 2023) [2023] KECA 834 (KLR) (7 July 2023) (Ruling)**

Neutral citation: [2023] KECA 834 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E228 OF 2023
HM OKWENGU, JA
JULY 7, 2023**

BETWEEN

JOHN PETER KAMAU RUHANGI APPLICANT

AND

REGISTRAR OF COMPANIES 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

YOUNG TRADERS LIMITED 3RD RESPONDENT

*(Application for extension of time to appeal against the Ruling and Orders
of the High Court- Commercial & Tax Division at Nairobi (Mabeya,
J) delivered on 6th May 2022) in Misc. Application No. E733 of 2021)*

RULING

1. The applicant, John Peter Kamau Ruhangi (John) has filed a Notice of Motion dated 4th May, 2023 seeking orders that this Court be pleased to grant him extension of time and leave to file a memorandum of appeal and record of appeal out of time and that the memorandum of appeal and record of appeal that he has already filed be admitted and deemed as duly and properly filed.
2. The applicant has sworn an affidavit in support of the motion in which he avers that the High Court (Mabeya, J) delivered a ruling in Milimani Misc. Application No. E733 of 2021 on 6th May, 2022 that he wishes to appeal against. On 12th May, 2022, his advocates applied for a copy of the impugned ruling and the pursuant orders via the e-filing portal. On 17th May, 2022, the advocates applied for a copy of the proceedings via the e-filing portal. However, the High Court delayed in processing the typed proceedings and the same were only made available on 16th November, 2022. A certificate of delay has been annexed.



3. The applicant further deposed that he ran into destabilizing family problems including a very sick son who needed kidney treatment in India. Consequently, he was constrained in terms of money and time, and was unable to meet his counsel as he was away in hospital with his sick son. This caused delays in lodging of the appeal. The applicant has annexed a flier that he used to raise funds for the son's treatment in India.
4. The respondent was served with the application on 10th May 2023, and a hearing notice on 30th May 2023 for the hearing of motion by a single Judge through written submissions. However, the respondent did not file any response to the motion. Nor did the applicant or the respondents file any written submissions.
5. Having considered the applicant's motion, that is brought under Rule 4 of this Court's Rules (the Rules), I note that Rule 4 of the Court of Appeal Rules 2022 provides as follows:

“The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended”.
6. Therefore, by dint of Rule 4 of the Rules, this Court has wide discretionary powers in its consideration of applications for extension of time. The issues that arises in the application herein is whether the applicant has given sufficient reasons for the delay to warrant this Court exercising its discretion in his favour, and whether the application, if allowed, will prejudice the respondents.
7. While the impugned decision was delivered on 6th May, 2022, a notice of appeal was filed on 19th May, 2022, 13 days after delivery of the impugned judgement. The delay in filing the record of appeal within the statutory 60 days has been explained on two fronts. The first is the delay by the High Court in issuing typed proceedings, a claim that has been supported by a certificate of delay issued by the deputy registrar. The second is the family constraints that the appellant suffered due to his son's illness, a claim that has been supported by an attached flier.
8. This Court in *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR stated:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”
9. Rule 84 of the Court of Appeal Rules 2022 provides that
 - “(1) Subject to Rule 118, an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged-
 - i. a memorandum of appeal, in quadruplicate
 - ii. the record of appeal, in quadruplicate
 - iii. the prescribed fee, and
 - iv. 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 of 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.”

10. In the circumstances herein, the applicant applied for copies of the proceedings and judgment on 12th May 2022 and the certificate of delay was issued by the superior court on 13th January, 2023. The certificate confirms that the period 17th May 2022 to 16th November 2022 were required for the preparation of the proceedings. However, the certificate confirms that it was prepared and was ready for collection on 13th January 2023. This means that the period to be excluded for computation of time must cover the period that was required for the preparation of the certificate of delay as the applicant could not benefit from the proviso to Rule 84 without the certificate of delay.
11. Be that as it may, the applicant’s motion was filed on 4th May, 2023, about 128 days after the issuance of the certificate of delay. This seems to be the delay that the applicant explains was due to the financial constraints arising from his son’s illness. The applicant has produced a flier as evidence of the alleged illness. However, the flier does not bear any date nor has the applicant produced any other evidence such as medical records or evidence of travel to prove the alleged illness.
12. As was stated in *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* (supra) a “plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour.” It is not enough for a party to merely make an allegation regarding the circumstances of the delay, the allegation ought to be accompanied with necessary persuasive evidence to make the explanation plausible. In this case, there is nothing before us to confirm the applicant’s alleged family or financial difficulties.
13. In the circumstances, I find that the delay in filing the application for extension of time was inordinate and the explanation for the delay is not satisfactory. Consequently, I have no basis upon which to exercise my discretion in the applicant’s favour. It follows that the applicant’s motion dated 4th May 2023 fails and is dismissed with costs.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF JULY, 2023.

HANNAH OKWENGU

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

