



**Kisire v Capital Markets Authority & another (Civil Application  
E249 of 2022) [2023] KECA 1483 (KLR) (8 December 2023) (Ruling)**

Neutral citation: [2023] KECA 1483 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E249 OF 2022  
P NYAMWEYA, JA  
DECEMBER 8, 2023**

**BETWEEN**

**CHRIS KISIRE ..... APPLICANT**

**AND**

**CAPITAL MARKETS AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 2<sup>ND</sup> RESPONDENT**

*(An application for extension of time to file an appeal against the judgment of the High Court at Nairobi (H. Ong'udi J.) delivered on 31st May 2022 in H.C.C. Pet No. 192 of 2018)*

**RULING**

1. Chris Kisire, the applicant herein, is aggrieved by the judgment delivered by H Ong'udi J on May 31, 2022 in Nairobi HCC Petition No 192 of 2018, in which he was the petitioner, and has filed an application in this Court by way of a Notice of Motion dated 4th July 2022, in which he seeks extension of time for filing and serving a Notice of Appeal against the said judgment. The application is supported by an affidavit sworn on even date by the applicant, wherein he states judgment in the matter was due for delivery on May 25, 2022, but was not delivered, and that he was informed by his advocate that it had been deferred to July 29, 2022, only to be informed on 13<sup>th</sup> June 2022 by way of newspaper reports that judgment in the said had been delivered against him.
2. Therefore, that the delay in filing and serving the Notice of Appeal in time was occasioned by the fact that he was not properly apprised of the correct date of the delivery of the judgment, and only became aware of the delivery of judgment after the statutory period for filing an appeal had already lapsed. Further, that his current advocates on record had challenges being mapped and consequently filing pleadings on the Judiciary's e-filing portal and were not able to file and serve the consent as well as the Notice of Change of Advocates on time, and by then the 14 days to file an appeal had already lapsed. Consequently, that the delay in this instance is not inordinate, has been sufficiently explained, is



excusable and the applicant has taken steps to bring this application without undue delay. Lastly, that the applicant has a meritorious appeal with high chances of success as demonstrated in the grounds of his draft Memorandum of Appeal and stands to suffer great prejudice if the application is not allowed, whereas the Respondents stand to suffer no prejudice in the circumstances.

3. The applicant annexed copies of the notice informing that the judgment would be delivered on notice, a copy of the judgment delivered by H Ong'udi J on May 31, 2022 in Nairobi HCC Petition No 192 of 2018, a consent dated June 17, 2022 on the change of advocates for the applicant, various e-mail correspondence on the linking of the applicant's advocates to the court's e-filing system, a letter dated June 22, 2022 addressed to the Deputy Registrar of the High Court of Kenya at the Constitutional and Human Rights Division seeking a copy of the judgment, decree and proceedings, and a draft memorandum of appeal.
4. None of the Respondents filed a response to the application, which I heard in chambers on November 1, 2023. This application is therefore unopposed. 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 applicant 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 May 31, 2022, and the date of lodging of this application on July 7, 2022. The applicant has explained that the delay was caused by the postponement of the judgment delivery and the time taken to change his advocates and to file the necessary documents in this regard and follow up on the appeal. I have considered the reasons for the delay, and it is notable that the fact of deferment of the impugned judgment and its delivery without notice is not disputed. In addition, the applicant has provided evidence of the intervening and consequent actions taken by its advocate, and I find them sufficient and adequate reasons for the delay, which is in the circumstances excusable and not inordinate.
6. On the chances of the intended appeal succeeding, all that I need to be persuaded at this stage is that the applicant has demonstrated the existence of plausible grounds of appeal and not their merit. The counsel for the applicant in this respect availed a draft memorandum of appeal, in which the main ground is that the impugned judgment was not supported by the evidence and applicable law, which in my view requires further argument and consideration.
7. I therefore find that the applicant merits the exercise of this Court's discretion for the above stated reasons. I accordingly allow the applicant's Notice of Motion application dated July 4, 2022, on the terms that the applicant is granted extension of time to file and serve a Notice of Appeal against the judgment delivered by H Ong'udi J on May 31, 2022 in Nairobi HCC Petition No 192 of 2018 within thirty (30) days of the date of this ruling. There shall be no order as to the costs of the application.
8. Orders accordingly.



**DATED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF DECEMBER 2023.**

**P. NYAMWEYA**

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

