



**Kenya Wildlife Services v Electrical Services Ltd (Civil Application
63 of 2020) [2022] KECA 1007 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KECA 1007 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION 63 OF 2020
K M'INOTI, JA
SEPTEMBER 23, 2022**

BETWEEN

KENYA WILDLIFE SERVICES APPLICANT

AND

ELECTRICAL SERVICES LTD RESPONDENT

*(Application for extension of time to file a notice and record of appeal
out of time against the Judgment and Decree of the High Court of Kenya
at Nyeri (Matheka, J.) dated 12th March 2020 in HCCC No. 08 of 2000)*

RULING

1. On March 12, 2020, the High Court of Kenya at Nyeri, (Matheka, J.) entered judgment for the respondent, Electrical Services Ltd, against the applicant, Kenya Wildlife Services Ltd, for Kshs 2,119,365 being interest on delayed payment, costs and interest. The applicant was aggrieved and wished to lodge an appeal, but it avers that due to the lockdown in the Judiciary in response to detection of the first Covid-19 infections in Kenya, it was not able to file the notice of appeal or submit its application for certified copies of the proceedings and judgment within the prescribed time. The applicant adds that it had prepared the letter seeking the proceedings on March 17, 2020 but was not able to access the court until the restrictions were eased in June 2020.
2. On July 15, 2020 the applicant filed the motion on notice now before me seeking extension of time to file the notice and record of appeal. To the affidavit sworn on July 15, 2020 by Doreen Mutunga, the applicant's Principal Legal Officer, in support of the application, is annexed a copy of the Internal Memo issued by the Hon. the Chief Justice dated March 15, 2020, effectively barring access to the Judiciary until further notice. The applicant has also presented a draft memorandum of appeal in which it is contended that the learned judge misapprehended the principles on interpretation of costs and ignored evidence on record which indicated the moneys awarded to the respondent were not payable.



3. The applicant's written submissions dated July 25, 2022 reiterate the above background and add that the intended appeal is no frivolous and that the Court ought to grant the applicant an opportunity to exercise its constitutionally underpinned right of appeal. It is further contended that the applicant was prevented from lodging the notice of appeal within the prescribed time by circumstances beyond its control.
4. The respondent, though duly served with a hearing notice, neither filed a replying affidavit nor written submissions. I shall accordingly treat the application as unopposed.
5. The discretion of a single judge to extend time is wide and unfettered. It is a discretion which is intended to ameliorate hardship and injustice. As in all other cases of exercise of discretion, it must be exercised judiciously rather than arbitrarily. In determining whether to extend time the Court takes into account several factors, among them the period of delay, the reason or explanation for the delay, the public interest issues involved, if any, the prejudice that each party stands to suffer and the prima facie prospects of the intended appeal. (See *Leo Sila Mutiso v Hellen Wangari Mwangi*, C.A. Nai. 251 of 1997) and *Fakir Mohamed v Joseph Mugambi & 2 Others*, CA No. Nai. 332 of 2004).
6. The delay in filing the notice of appeal was about four months, which ordinarily would be inordinate for filing a one page document. However, the more critical issue is the explanation for that delay, which is the lockdown of the Judiciary due to the Covid-19 pandemic. The appellant has annexed the Hon. Chief Justice's Internal Memo directing the lockdown in the Judiciary. I am satisfied that the applicant has candidly and satisfactorily explained the reason for the delay. From the draft memorandum of appeal, I can't say that the intended appeal is frivolous. The respondent has not filed any document in opposition to the application and under those circumstances, I am not able to say that they stand to suffer any prejudice. If anything, in the circumstances of this application the applicant ought to have the opportunity to pursue its right of appeal to its logical conclusion.
7. Taking all the foregoing into account, I am persuaded that this application is merited. Accordingly, I allow the same and direct the applicant to file and serve the notice of appeal within 14 days from the date of this ruling. Costs of the application shall abide the outcome of the intended appeal. It is so ordered.

DATED AT NAIROBI THIS 23RD DAY OF SEPTEMBER, 2022

K. M'INOTI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

