



REPUBLIC OF KENYA



KENYA LAW
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**Invest & Grow Sacco Ltd v Amudavi (Civil Application
E505 of 2022) [2022] KECA 1164 (KLR) (28 October 2022) (Ruling)**

Neutral citation: [2022] KECA 1164 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E505 OF 2022**

**A ALI-ARONI, JA
OCTOBER 28, 2022**

BETWEEN

INVEST & GROW SACCO LTD APPLICANT

AND

WYCLIFF SHIVACHI AMUDAVI RESPONDENT

(An application for leave to extend time to file a notice of appeal out of time and to deem one already filed as duly filed for an intended Appeal against the Judgment and Decree in the High Court of Kenya at Nairobi (Hon. J. K. Serгон J) delivered on 17th June 2022) in H.C.C.C NO. 408 of 2021)

RULING

1. The applicant seeks for extension of time within which to lodge a notice of appeal and to have the notice filed on 2nd of August 2022 to be deemed to be duly served and properly on record the applicant having been aggrieved by the judgment and decree of the High Court in HCCC No 408 of 2021 and intends to appeal against the same.
2. In two affidavits one sworn by Peter Vuhya and the other learned counsel for the applicant, Musa M'mbwana Nandwa both allude to the fact that the judgement was delivered in the absence of counsel or a representative of the applicant, the said judgment having delayed and was eventually delivered without notice to the applicant or his counsel who came to learn of the same upon being served with the decree one and a half months or there about later by counsel for the respondent.
3. The applicant contends further that upon receiving information on the judgement they instructed their counsel who within 7 days filed the notice of intention to appeal and a day after filed the application for extension of time.
4. Notable and despite service of the hearing notice no response was placed on record by the respondent meaning that the application remains unopposed.



5. This court has been asked to invoke rule 4 of this courts Rules which provide 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 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. The court has wide and unfettered discretion and may extend time or any decision or doing of an act on such terms as it thinks just. This discretion ought to be excised judiciously and reasonably and upon satisfactory explanation and taking into consideration other relevant factors.

In Karny Zabarya & another vs Shalom Levi Civil Appl No 80 of 2018, Koome, JA (as she then was) stated:

“Some of the considerations to be borne in mind while dealing with an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal; the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, *prima facie*, the intended appeal has chances of success or is a mere frivolity. In taking into account the last consideration, it must be born in mind that it is not the role of a single judge to determine definitively the merits of the intended appeal. That is for the full court if and when it is ultimately presented with the appeal”

7. The delay herein as explained cannot be blamed on the applicant nor is there any apparent likelihood of prejudice on the part of the respondent in the circumstances. It also appears to me that the intended appeal is arguable and not frivolous and it would therefore be wrong to shut out the applicant from pursuing the intended appeal.

8. Against the above analysis the time within which to file and lodge the notice of intention to appeal is hereby extended and the same is deemed to be duly on record and served.

9. Costs will abide the outcome of appeal.

DATED AND DELIVERED IN NAIROBI THIS 28TH DAY OF OCTOBER 2022

ALI-ARONI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

