



Kenya Railways Corporation v Katangi Developers Limited & 2 others (Civil Application E103 of 2021) [2021] KECA 311 (KLR) (17 December 2021) (Ruling)

Neutral citation: [2021] KECA 311 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E103 OF 2021
MA WARSAME, JA
DECEMBER 17, 2021**

BETWEEN

KENYA RAILWAYS CORPORATION APPLICANT

AND

KATANGI DEVELOPERS LIMITED 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

ETHICS AND ANTI CORRUPTION COMMISSION 3RD RESPONDENT

(An application for extension of time to file a memorandum and record of Appeal from the judgment decree of the Environment and Land Court at Kisumu (Justice Ombwayo) dated 11th February, 2021 in Petition No. 10 of 2019)

RULING

1. By a Notice of Motion dated 29th June 2021, the applicant, Kenya Railways Corporation, has moved this Court for leave to file its Memorandum of Appeal and Record of Appeal out of time. The applicant contends that it is aggrieved by the judgment of Ombwayo J. delivered on 11th February 2021 which allowed the 1st respondent's petition against itself and the 2nd respondent. The applicant filed its notice of appeal timeously on 22nd February 2021 and also requested for certified copies of the judgment and the proceedings on 17th February 2021 which was within the stipulated time.
2. The reason for the delay in lodging the appeal as stated in the notice of motion and reiterated in the supporting affidavit of Stanley Gitari, is that the file has been inaccessible due to pending applications and rulings, that the file has been moving between the Judge's chambers and the registry making it difficult for the applicant to track the file and ensure the proceedings are typed and processed on time, that the applicant has made several attempts to procure the proceedings from the registry without



success. As a result, the applicant has not been supplied with certified copies of the judgment and proceedings necessitating the current application.

3. The factors to be considered in deciding whether to exercise this Court's discretionary power under Rule 4 in favour of an applicant includes the length of the delay; the reasons for the delay; the arguability of the applicant's intended appeal; the degree of prejudice, if any, to the other party if time is extended; the public interest or importance of the matter; and generally, the requirements of the interest of justice (See [Velos Enterprises Ltd v Paragon Electronics Limited \[2017\] eKLR](#))
4. It is undisputed that the applicant mounted the Notice of Appeal and the letter seeking typed certified copies of the proceedings and judgment for purposes of preparing the record of appeal within the set time limits. It is trite, that without the copies of the proceedings and the certified judgment from the court any appeal mounted by a party would be hopelessly defective. Indeed, in a bid to expedite the process in pursuit of an intended appeal and in furtherance of the oxygen principles, litigants may follow up with the court on the status of their request for proceedings but the buck stops with the court registry to prepare the requisite documents within the statutory time and to formally inform the appellants that they are ready for collection.
5. In the circumstance I find that the application is merited and I am satisfied with the explanation for the delay. The application is allowed and I direct that the memorandum of appeal and record of appeal be filed and served within 30 days. No orders as to cost.

Dated and delivered at Nairobi this 17th day of December, 2021.

M. WARSAME

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

