



**Vectoron Pest Control & Supplies Ltd v Haranga (Appeal
E255 of 2024) [2025] KEELRC 742 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 742 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E255 OF 2024
K OCHARO, J
FEBRUARY 27, 2025**

**BETWEEN
VECTORON PEST CONTROL & SUPPLIES LTD APPLICANT
AND
ABDALLA MWACHIKOPHE HARANGA RESPONDENT**

RULING

Background

1. The Applicant's Notice of Motion dated 4th December 2024, that is before this Court seeks, for enlargement of time to enable him the lodge an appeal against the Judgment of the Lower Court in Mombasa MCELRC NO. E 596 of 2022, delivered on 28th October 2024, and that pending the hearing and determination of the intended appeal there be a stay of execution of the decree in the stated matter. The Respondent opposed the application through a Replying Affidavit sworn on 16th December 2024.
2. The application is expressed to be under Sections 3A and 79G of the *Civil Procedure Act*, Order 42 Rule 6(1), and Order 50 Rule 6 of the *Civil Procedure Rules*.
3. The Grounds upon which the Notice of Motion dated 4th December 2024 is anchored are that:
 - i. The orders sought are necessary as the Applicant's property is at the risk of being attached, sold, or vandalized. Without the stay, it will suffer significant financial loss and damage to its property.
 - ii. Additionally, the execution, if allowed to proceed would severely impact its workforce and lead to substantial losses, making the intended appeal futile if successful.
 - iii. The appeal has strong and arguable grounds, which would be rendered nugatory if the orders sought are not granted.



- iv. The delay in filing the appeal, was caused by the court registry’s failure to provide certified copies of proceedings in MOMBASA MCELRC NO. E596 of 2022. Thus, there is a sufficient reason to justify grant of the extension of time to file the appeal.
 - v. The application was brought without undue delay given the circumstances.
 - vi. Furthermore, the Applicant expresses readiness to provide security for the implementation of the stay orders. This includes depositing the decretal sum in a joint interest-earning account, or as the court may deem appropriate.
4. In the Respondent’s Replying Affidavit, he asserts that;
- i. The Applicant was duly served with the letter regarding costs on 14th November 2024.
 - ii. The Applicant has not taken placed forth any form of proof, demonstrating that he applied for proceedings as he alleges. There is on the court’s online platform. The delay in filing the appeal is attributed to the Applicant’s own inaction, demonstrating negligence and indolence.
 - iii. That the Applicant has no valid basis to seek an extension of time to appeal, as they intentionally failed to act within the required timelines. The application an abuse of the court process, aimed at frustrating the Respondent from enjoying the fruits of his judgment.
 - iv. Furthermore, while the right of appeal exists, valid reasons must be provided for the failure to file the appeal out within time, which the Applicant has failed to.
 - v. No evidence has been presented to support claims that the Applicant would suffer substantial financial harm if the orders sought aren’t granted.
 - vi. Given the circumstances, if the Court is inclined not to dismiss the application, it should impose conditions, such as requiring the Applicant to deposit the decretal sum of Kshs. 515,451.50 in a joint interest-earning account within 30 days. This would ensure a fair balance of interests between both parties.
 - vii. Dismissal of the application with costs, is the fairest thing that should be done, as granting the application would be prejudicial, and an improper use of judicial discretion to aid a negligent party.

Analysis and determination

Issue

- a. Whether this Court should grant leave to the Applicant to file its appeal out of time
5. The authority bestowed on courts of law to enlarge time for filing an appeal out of time is exercised discretionarily but judiciously, not whimsically or capriciously, and not based on sympathy. The Court in *Kariuki v. CIC General Insurance (Civil Application E161 of 2022)* [2022] KECA 1166 (KLR) (28 October 2022) (Ruling) held that “Filing an appeal within a period of limitation is the rule, and condonation of delay is an exception. While condoning the delay, the courts must be cautious and only on genuine reasons; the courts are empowered to condone the delay. The power of discretion to condone the delay is to be exercised judiciously and by recording reasons. The reasons furnished for condonation of delay must be candid and convincing. Therefore, the condonation of delay cannot be claimed as a matter of right and only on genuine reasons, the delay is to be condoned and not otherwise.”



6. The principles governing the exercise of discretion in an application for extension of time were elaborately set out in *Korir Salat v Independent Electoral and Boundaries Commission & 7 others* {2014} eKLR when the Court stated that: -
 - i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
 - ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 - iii. Whether the court should exercise the discretion to extend time is a consideration to be made on a case-to-case basis;
 - iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
 - v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - vi. Whether the application has been brought without undue delay; and
 - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time."
7. In this case, the period of delay is not excessive but the reason tendered for the delay is unsatisfactory. The Applicant states that the delay was occasioned by the failure of the registry to avail typed and certified copies of proceedings. However, no letter is attached to prove that the Applicant indeed requested for the proceedings from the registry.
8. The Judgment sought to be assailed was delivered on 28th October 2024. Therefore, the statutory period for filing an appeal against it lapsed on 27th November 2024. The Applicant filed the appeal herein on 28th November 2024, a day outside the statutory period within which it ought to have exercised its right to lodge an appeal against the Judgment of the Trial Court. It subsequently, and timeously so filed the instant application on 4th December 2024, seven [7] days after the lapse of the stated period.
9. In the circumstances, I am unable to garner the impression, as the Respondent wants me to that the Applicant suffered from indolence and carelessness the pursuit to exercise his right of appeal. It deserves the extension of time sought.
10. I now turn to consider the second limb of the application, the stay of execution pending appeal. The power to grant a stay of execution pending appeal flows from the provisions of Order 42 of the Civil Procedure Rules, which the Employment and Labour Relations Court [Procedure] Rules 2024 expressly allows to be applicable in execution proceedings relating to decrees of the Court. It is pertinent, however, to state that the discretion isn't a discretion at large; it must be exercised within those parameters delineated in the Order. It is only exercised in favour of an Applicant who successfully demonstrates that the application has been lodged timeously; if the orders of stay sought are not granted, he or she shall suffer substantial loss, and he or she is offering security for the due performance of the decree in case the appeal fails.
11. No doubt, the instant application was filed without laches. The Applicant expressly states that it is willing to provide appropriate security pending appeal, including depositing the decretal amount in a joint interest earning account. I am of the view that a deposit of the entire decretal amount by the Applicant in a neutral account, shall assure the Respondent availability of the decretal sum to enjoy, if



the Applicant loses the intended appeal, while on the other hand it gives assurance to the Applicant, that should the appeal succeed, it will have funds available to recoup.

12. In the upshot, I find the Applicant's application merited, and it is hereby allowed in the following terms;
 - I. The Applicant is granted leave to file and serve a memorandum of appeal.
 - II. There shall be a stay of execution of the decree in Mombasa CMELRC 596 OF 2022 subject to it depositing the decretal sum thereof in court within 30 days of today.

READ SIGNED AND DELIVERED THIS 27TH DAY OF FEBRUARY 2025.

OCHARO KEBIRA

JUDGE

