



**Well Run Autospares & Accessories Limited v Sonkei & another (Civil Appeal E222 of 2024) [2025] KEHC 12156 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 12156 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL APPEAL E222 OF 2024  
F WANGARI, J  
JUNE 30, 2025**

**BETWEEN**

**WELL RUN AUTOSPARES & ACCESSORIES LIMITED ..... APPELLANT**

**AND**

**SAINKO ENE SONKEI ..... 1<sup>ST</sup> RESPONDENT**

**POLO AUTO FREIGHT FORWARDERS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the Judgment of Hon. R.N Akee, SRM delivered on 06/05/2024 in Mombasa SRMCC No. 1608 of 2013)*

**RULING**

1. The Appellant herein filed the Memorandum of Appeal dated 27/05/2024 but filed on 27/07/2024 after being dissatisfied with the Judgment of Hon. R.N Akee, SRM delivered on 06/05/2024. Directions were given on the disposal of the appeal by way of written submissions. On 21/05/2025, the counsel for the Respondent raised an oral Preliminary Objection that the appeal was filed out of time.
2. The Appellant filed submissions in response to the P.O dated 23/05/2025. It was submitted that there was delay in supplying the Appellant with typed proceedings and copy of judgment. It was also submitted that on 03/12/2024, the court had granted leave to have the Amended Memorandum of Appeal filed. On 17/03/2025, the Appellant confirmed having filed the same dated 24/05/2025 and the Respondent confirmed having received the same.

**Analysis**

3. The parameters of consideration of a Preliminary Objection are now well settled. A Preliminary Objection must only raise issues of law. The principles that the court is enjoined to apply in determining the merits or otherwise of the Preliminary Objection were set out by the Court of Appeal



in the case of Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd [1969] EA 696. At page 700, Law, JA stated: -

“ A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the Court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

4. Filing of appeal within the provided time is an issue of law. The issue before me is whether the delay in lodging a Memorandum of Appeal has been satisfactorily explained. Waki, JA in Seventh Day Adventist Church East Africa Ltd. & Another vs. M/S Masosa Construction Company Civil Application No. 349 of 2005 held that;

“As the discretion to extend time is unfettered, there is no limit to the number of factors the Court would consider so long as they are relevant; the period of delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the Respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with the time limits, the resources of the parties, whether the matter raises issues of public importance are all relevant but not exhaustive factors...In an application for extension of time, each case must be decided on its own peculiar facts and circumstances and it is neither feasible nor reasonable to lay down a rigid yardstick for measuring periods of delay as explanations for such delays are as many and varied as the cases themselves...The ruling striking out the appeal is not only necessary for exhibiting to the application for extension of time but also for consultations between the applicant’s counsel and their clients and the fact that the ruling was returned to Nairobi for corrections is a reasonable explanation for the delay... Where the Respondent has already recovered all the decretal sum and costs attendant to the litigation, the right of appeal being a strong right which is rivalled only to the right to enjoy the fruits of judgement, no prejudice would be caused to the respondent who has enjoyed his rights in full if an opportunity is given to the applicants to enjoy theirs too, even if it is on a matter of principle.

5. It is imperative to note the Supreme Court of Kenya decision (M.K. Ibrahim & S.C. Wanjala SCJJ) in Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 others [2014] eKLR where the learned Judges held as follows: -

- “(1) 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.
- (2) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.
- (3) Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case to case basis.
- (4) Whether there is reasonable reason for the delay. The delay should be explained to the satisfaction of the court.

6. It follows therefore that the Applicant’s explanation for the delay is key in guiding the Court’s exercise of discretion on the issue of leave to appeal out of time.



7. I have confirmed that the Memorandum of Appeal (M.O.A) was filed on 25/07/2024, almost 2 months after the judgment was delivered. The reasons given is that the typed proceedings had not been issued to the Appellant, and it is upon the issuance of the same that the appeal was filed.
8. The Appellant further submits that leave was granted to amend the M.O.A. I have perused the proceedings dated 03/12/2024 and no such leave was granted as the Appellant did not make any application to amend the M.O.A. Further, upon perusal of the proceedings dated 21/05/2024, no proceedings relating to the amended R.O.A were recorded.
9. On the merits of the P.O, I have perused the M.O.A filed on 25/07/2024. The same is dated and signed on 27/05/2024. Nothing stopped the Appellant from filing the M.O.A which was ready for filing, and within time of filing appeals. Unlike filing of the Record of Appeal where proceedings and copy of judgment are necessary, that is not the case for the filing of M.O.A.
10. I find that the Appellant has failed to give reasons for the delay, and has not given reasons as to why leave was not sought to file the appeal out of time in accordance with Section 79 G of the [Civil Procedure Act](#) which provides as follows;

“ Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order: Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.
11. Therefore, in my view, without a valid reason, this court has no jurisdiction to extend time. This is an exercise of discretion. Unless the court is properly moved, it has no power to exercise discretion. It is not by whim but through judicious consideration that such an application is considered.
12. The oral Preliminary Objection is therefore upheld and the appeal is hereby struck out with costs to the Respondent.

### **Determination**

13. In the circumstances I make the following orders: -
  - a. The oral Preliminary Objection raised on 21/05/2025 is hereby upheld.
  - b. Costs to the Respondent

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 30<sup>TH</sup> DAY OF JUNE, 2025.**

.....

**F. WANGARI**

**JUDGE**

In the presence of: -

Mr. Arosi Advocate for the Appellant.

Ms. Juma Advocate for the 1<sup>st</sup> Respondent.

Ms. Getrude, Court Assistant

