



**Chengo v Standard Group PLC (Civil Application E059 of 2023)
[2024] KECA 161 (KLR) (23 February 2024) (Ruling)**

Neutral citation: [2024] KECA 161 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPLICATION E059 OF 2023
KI LAIBUTA, JA
FEBRUARY 23, 2024**

BETWEEN

NGUMA CHARO CHENGO APPLICANT

AND

THE STANDARD GROUP PLC RESPONDENT

(Being an application for extension of time to file the Notice of Appeal out of time from the Judgment and Decree of the High Court of Kenya at Mombasa (Olga Sewe, J.) delivered on 26th April 2023 in H.C.C.A No. E082 of 2021)

RULING

1. Before me is the applicant's Notice of Motion dated 4th July 2023 filed pursuant to rule 4 of the Court of Appeal Rules seeking leave to file his notice of appeal dated 5th May 2023 out of time. The applicant also prays for orders that the notice of appeal lodged on 29th May 2023 and served on the respondent by email dated 11th May 2023 be deemed as duly filed and served.

The applicant's Motion was supported by the applicant's annexed affidavit sworn on 4th July 2023 essentially deposing to the grounds on which the application is made, namely: that the judgment

2. sought to be challenged on appeal was delivered on 26th April 2023; that counsel for the applicant, M/s. Chebukaka & Associates, filed and paid for his notice of appeal through the Court's online portal on 5th May 2023; that counsel got concerned with the delay in receiving the stamped copy; that, on inquiry, counsel was advised by staff under the Deputy Registrar to deliver hard copies of the notice; and that counsel did so, and had the notice of appeal endorsed as having been lodged on 29th May 2023 after expiry of the time allowed under the Court of Appeal Rules to lodge a notice of appeal.



Learned Counsel filed submissions and a list of authorities dated 18th July 2023 in support of the applicant's Motion. Counsel cited the cases of *Vishva Stone Suppliers Company Limited vs. RSR Stone [2006] Limited [2020]* eKLR; and *Kiu & Another vs. Khaemba & 3 Others [2021]* KECA 318 (KLR).

3. On their part, the respondent did not file any reply to the applicant's Motion or any submissions in that regard.

Having considered the applicant's Motion, the affidavit in support thereof, and the written and oral submissions of counsel for the applicant, I call to mind the principles laid down in the afore-cited cases for exercise of the Court's discretion in favour of an applicant pursuant to rule 4 of the Court's Rules, namely: (i) whether the intended appeal is arguable with a possibility of success; (ii) the reasons for the delay in filing the intended appeal; (iii) whether the delay was inordinate; and (iv) whether the Respondent would be unduly prejudiced by extension of time for the Applicant to file the appeal.

4. I find nothing on the record to suggest that the applicant has an arguable appeal, which is the first requirement that the applicant must satisfy before the other three factors are considered in exercise of the Court's discretion under rule 4. In the absence of a memorandum of appeal or mention of even a single ground on any of the documents comprising the record, I can only conclude that the Motion as presented is incompetent and is hereby dismissed with no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF FEBRUARY, 2024.

DR. K. I. LAIBUTA

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

