Paksons Enterprises Limited v Kipkoech t/a Paksons Agroveterinary Solutions & another (Civil Application E097 of 2025) [2025] KECA 1947 (KLR) (21 November 2025) (Ruling)

Neutral citation: [2025] KECA 1947 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAKURU

CIVIL APPLICATION E097 OF 2025

MA WARSAME, JA

NOVEMBER 21, 2025

BETWEEN

PAKSONS ENTERPRISES LIMITED .... APPLICANT

AND

PATRICK KIPKOECH T/A PAKSONS AGROVETERINARY

SOLUTIONS .... 1ST RESPONDENT

REGISTRAR OF COMPANIES .... 2ND RESPONDENT

(An application for extension of time to file a Record of Appeal out of time against the judgment of the High Court at Kericho (Sergon, J.) delivered on 5th December 2024 in HCCC No. 4 of 2018)

RULING

1. The applicant, Paksons Enterprises Limited has filed a Notice of Motion dated 29th September 2025 seeking orders for extension of time to file and lodge a Record of Appeal out of time, having failed to lodge the Record of Appeal within the statutory 60-day period prescribed under Rule 82 of this court's rules.

2. The brief facts are that judgment was delivered on 5th December 2024. The applicant filed a Notice of Appeal timeously on 17th December 2024 and allegedly applied for typed proceedings and judgment on 9th December 2024. According to the applicant, the typed proceedings were only made available on 4th September 2025.

3. The applicant had 60 days from 17th December 2024 to file the Record of Appeal, which period expired on or about 15th February 2025. The present application was filed on 29th September 2025, representing a delay of approximately seven

(7)   months. The applicant attributes this entire delay to the registry's failure to provide typed proceedings timeously, alleging that proceedings requested on 9th December 2024 were only supplied on 4th September 2025.

4.   Rule 82 of the *Court of Appeal Rules*, 2022 provides for the time within which an appeal must be instituted. The proviso to Rule 82(1) allows for exclusion of time taken in typing and certification of proceedings, but only where two conditions are met:

    a.   The application for proceedings was made in writing within 30 days of the decision; and

    b.   A copy of the application for proceedings was served upon the respondent.

5.   The applicant contends that a certificate of delay was issued. However, despite this assertion, no certificate of delay has been annexed to the application or produced before this Court. More critically, there is no evidence that the letter dated 9th December 2024 requesting typed proceedings was served upon the 1st Respondent as required by Rule 82(2).

6.   In the present application, the applicant has failed to produce the certificate of delay allegedly obtained and Proof of service of the letter dated 9th December 2024 requesting typed proceedings upon the 1st respondent. The certificate of delay is the proper mechanism through which delays by the registry are mitigated and documented. It is not sufficient to merely state that proceedings were made available late. Without the certificate of delay, the applicant's allegation that delays were caused by the registry remains unsubstantiated. The applicant must produce the certificate of delay to demonstrate what period, if any, should be excluded from the computation of time.

7.   Without proof of service of the application for proceedings on the 1st Respondent, and without production of the certificate of delay, the applicant cannot benefit from the exclusion of time provisions under Rule 82. Consequently, the 60-day period prescribed under Rule 82 has lapsed without justification.

8.   In the circumstances, I find that the applicant has not demonstrated sufficient cause to warrant the grant of an extension of time. The delay is not satisfactorily explained, and the applicant has failed to discharge the burden of proof required in such applications.

9.   Accordingly, this application is dismissed with no orders to costs.

DATED AND DELIVERED AT NAKURU THIS 21ST DAY OF NOVEMBER, 2025.

M. WARSAME

....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR