



REPUBLIC OF KENYA



Hass Scientific & Medical Services v KCB Bank Kenya Limited (Civil Appeal E249 of 2020) [2025] KEHC 12864 (KLR) (Civ) (18 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12864 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL APPEAL E249 OF 2020**

AC MRIMA, J

SEPTEMBER 18, 2025

BETWEEN

HASS SCIENTIFIC & MEDICAL SERVICES APPELLANT

AND

KCB BANK KENYA LIMITED RESPONDENT

RULING

1. This is a ruling in respect of an application by way of a Notice of Motion dated 7th April 2025 which sought the reinstatement of this appeal which was dismissed for non-prosecution within a set timeline. The application in effect sought for extension of time for purposes of disposing the appeal.
2. The application was opposed by the Respondent and was eventually heard by way of written submissions, hence, this ruling.

The Application:

3. The application was supported by an Affidavit and a Supplementary Affidavit both deposed to by one George Ombati respectively and sought the following orders: -
 1. spent.
 2. That this Court be pleased to set aside and or vary the order of this Honourable Court of 12th May 2023 and to grant the Appellant/Applicant herein an enlargement of the period for hearing the instant appeal by 45 days from the date of granting the prayers herein that or for such reasonable period as this Honourable Court may determine.
 3. That the Order of this Court issued on 12th May 2023 be set aside and this Honourable Court be pleased to enlarge the period of compliance with the Appellant/Applicant's appeal



be reinstated and the same be set down for hearing inter-partes within such reasonable period as this Honourable Court may determine.

4. That costs of this application be in the cause.
4. In the grounds in support of the application, the Applicant stated that they filed the Memorandum of Appeal dated 23rd June 2020 and after the directions of the Court of 12th May 2023, it had been frustrated in its attempts to fix a hearing date as its repeated letters and phone calls to the High Court were never responded to. The Applicant attributed the challenge to have the appeal heard to its inability to secure a hearing date, a fact it claimed was outside its control. It asserted that it was in the interest of justice that the directions of 12th May 2023 be revisited since it stood to suffer substantial loss from the judgment of the subordinate Court. The Appellant stated that the Appeal has high probability of success and the mistake of the Advocate should not be visited upon a client.
5. In the supporting Affidavit, it was his deposition that they served the Record of Appeal on the same day, 12th May 2023, and drew a letter of the same date addressed to the Deputy Registrar followed by phone calls. It was his case that he subsequently wrote a letter dated 11th August 2023 and 21st September 2023 neither of which were successful in securing a hearing date. In the supplementary affidavit, it was his case that there was office staff changes that resulted in partial disruption which resulted in inadvertent loss of track of the office file rendering it unable to move forward in the appeal. However, they filed the instant application the moment they traced the file in early April this year. It was his deposition that they are bound to suffer great prejudice in the sum of Euros 111,281.75 if the application is not allowed.
6. In its submissions dated 27th May 2025, the Appellant submitted that it was its constitutional right under Article 25(c) and 50 to be heard. It cited the decision in Richard Nchapi Leiyangu -vs- IEBC & 2 Others where it was observed that the right of hearing is the corner stone of the rule of law.
7. As regards enlargement of time, it was its case that Section 95 of the Civil Procedure Rules, Order 50 Rule 6 of the Civil Procedure Rules as read alongside Article 159(2)(d) of *the Constitution* give the Court wide discretion to enlarge time even in instances where the period originally fixed may have expired. The Applicant relied on the case of Shah -vs- Mbogo & Another (1967) EALR to assert the position that discretion can be used favourably where there is inadvertence or excusable mistake or error. The Applicant submitted that its appeal is not frivolous as it raises triable issues of law and fact and the right to appeal cannot be denied on account of registry related impediments. It was its submission based on the decision in Philip Chemwolo & Another -vs- Augustine Kubendo (1982-88) KAR that mistakes ought not be visited against a party at the expense of determining their case on merit.
8. The Applicant submitted that the Respondent will not suffer any prejudice since it will be compensated by an award of costs.

The Respondent's case:

9. KCB Bank Kenya Limited challenged the appeal through Grounds of Opposition, the Replying Affidavit of Lilian Sogo, the head Counsel Litigation, and written submissions dated 5th May 2025, 6th May 2025, and 13th June 2025 respectively
10. In the Ground of Opposition and the Replying Affidavit, it was its case that the Application was made after the expiry of 1 year and six months since dismissal of the Appeal and expiry of 120 days that had been granted by this court. As such, the was undue delay.



11. Further it was its case that prior to the dismissal the Appellant had not taken steps since 29th June 2020. It claimed that the orders sought are highly prejudicial and litigation ought to end.
12. In its written submissions, the Respondent, while relying on various authorities among them the one in Civil Appeal No. 124 of 2004 Habo Agencies Limited & Winfred Odhiambo Musingo submitted that the Applicant was undeserving of this Court's favourable exercise of discretion.

Analysis:

13. The only issue that arises for determination is whether the application meets the threshold for extension of time for the Applicant to prosecute its appeal.
14. Extension of time, generally, is an equitable discretionary power and not a matter of right. In *Nick Salat -vs- Independent Electoral and Boundaries Commission & 7 others* the Supreme Court observed as follows: -

..... Extension of time being a creature of equity, one can only enjoy it if he acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it.

15. While concurring with the Court of Appeal in *Paul Wanjohi Mathenge -vs- Duncan Gichane Mathenge* [2013] eKLR, the Supreme Court laid out the applicable principles on extension of time in the following terms: -

.... I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance

For instance, in *Leo Sila Mutiso -vs- Rose Hellen Wangari Mwangi - Civil Application No. Nai. 255 of 1997* (unreported), the Court expressed itself thus: -

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted. (emphasis added).

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; A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court; Whether there will be any prejudice suffered by the respondents if the extension is granted; Whether the application has been brought without undue delay; and Whether in certain cases, like election petitions, public interest should be a consideration for extending time



16. With the foregoing guiding principles, this Court will now briefly look at the facts in this case. The trial Court rendered its judgment on 29th May 2020. Consequently, on 29th June 2020, the Applicant filed this before Court its Memorandum of Appeal. There is on record the letter dated 14th July 2021 by the Appellant addressed to the Executive Officer. It referred to an earlier letter dated 4th June 2021 and it sought to know the status of the proceedings and the judgment. There is also the letter dated 9th March 2022. Further, the Appellant, while addressing the Executive Officer, referred to the letters of 4th June 2021 and 14th July 2021, which letters also sought to know of the status of typed proceedings and judgment. Through the letter dated 25th July 2022, the Appellant indicated that it had received notification that the proceedings were ready for collection and wanted to know the amount payable in order to take custody of the typed proceedings and the judgment. It also requested for a Certificate of Delay.
17. Accordingly, the trial Court issued a Certificate of Delay dated 16th August 2022 which indicated that the period from 4th June 2021 to 2nd February 2022 was requisite for the preparation and delivery of certified copies of proceeding and judgment. On 5th September 2022 the Appellant wrote to the Executive Officer seeking the amendment of the Certificate of Delay. It asserted that the period of delay ought to have commenced on 23rd June 2020 when the erstwhile Advocate of the Appellant wrote to the Court seeking typed proceedings and the judgment. Accordingly, the trial Court issued an amended Certificate of Delay dated 10th May 2023 indicating that the period of delay commenced on 23rd June 2020 to 9th May 2023.
18. From the foregoing chronology of events, when parties appeared before this Court on 12th May 2023 pursuant to a NTSC dated 27th March 2023, the Appellant had proactively pursued the typed proceedings and the impugned judgment for purposes of lodging its Record of Appeal. From the Certificate of Delay, time had just started running since the proceedings and the judgment were ready for collection as from the 9th May 2023. Therefore, the period between 23rd June 2020 and 9th May 2023 is excluded for purpose of the decision to dismiss the appeal. However, from the record, it is discernible that after 12th May 2023 the Appellant took no further steps to prosecute its appeal. Despite the proceedings and the judgment being ready, the 120 days the Court gave the Appellant to dispose of the appeal elapsed with no action taken. For clarity, when the 120 days elapsed on 13th September 2023, it took the Appellant another 1 year and 7 months to lodge the instant application herein.
19. Coming back to the principles applicable for the exercise of this Court's discretion, there is no question that the delay of 1 year and 7 months is long. The Applicant seeks to excuse the delay by erroneously referring to its pursuit during the period when proceedings and judgment were not ready. The foregoing notwithstanding, there is evidence of the letters dated 11th August 2023 and 21st September 2023. In the former, the Appellant strenuously let the Court know that its 120 days were fast running out. It sought the appeal to be accommodated and the file be placed before the Judge for an early date for hearing and disposal of the Appeal. The latter letter reiterated the foregoing plea. The letters seem not to have elicited any response from the Court. The foregoing leaves no doubt that had the Court placed the file before the Judge, the Appellant would have progressed its appeal. Despite the delay, therefore, this Court finds that the Court is blameworthy for not fulfilling its mandate to accord the Appellant the opportunity to be heard.
20. As regards the chances of the appeal succeeding, I have had a look at the Memorandum of Appeal. The main contention is who bears the error in the transfer of money in the form of Real Time Gross Settlement (RTGS) and the question as to whether the Respondent had a fiduciary duty to disclose that the Recipient's account was fraudulent. The foregoing issues, in this Court's assessment, are arguable



in law. Further, the Respondent has not proffered any evidence to lend credence to the claim that it will suffer prejudice should the application be allowed.

21. In the premises, the discretion of this Court going by the circumstances herein, favours a finding that will ensure the Applicant is accorded its right of appeal. That finding is to allow the application.

Disposition:

22. Drawing from the foregoing, the following final orders hereby issue: -
- (a) The Appeal is hereby reinstated and the dismissal order of 12th May 2023 is hereby set aside.
 - (b) The appeal is hereby admitted into hearing by way of written submissions.
 - (c) The Appellant shall file and serve written submissions within 14 days of this order.
 - (d) Once served, the Respondent shall file and serve written submissions within 14 days of service.
 - (e) The matter shall be fixed for highlighting of submissions on a date to issue.
 - (f) The costs of the application shall be in the appeal.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Mr. Ombati, Learned Counsel for the Appellant/Applicant.

Mr. Chege, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.

