



**Mugambi v Kenya Commercial Bank Ltd & 2 others (Civil Application  
68 of 2020) [2025] KECA 1490 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KECA 1490 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION 68 OF 2020  
W KARANJA, J MOHAMMED & LK KIMARU, JJA  
SEPTEMBER 19, 2025**

**BETWEEN**

**DAVID PIUS MUGAMBI ..... APPLICANT**

**AND**

**KENYA COMMERCIAL BANK LTD ..... 1<sup>ST</sup> RESPONDENT**

**ISAAC GITONGA RINGERA T/A VIEWLINE AUCTIONEERS .... 2<sup>ND</sup>  
RESPONDENT**

**DR J'ITESH DODHIA ..... 3<sup>RD</sup> RESPONDENT**

*(A reference to the full court under Rule 57 of the Court of Appeal Rules from the Ruling of Okwengu, JA delivered on 4th June 2021 on an application for extension of time to file and serve a record of appeal out of time against the judgment of the High Court of Kenya at Meru (Mabeya J.) delivered on 16th January, 2020 in Civil Suit No. 31 of 2018)*

**RULING**

1. This is a reference to the full Court, under Rule 57 of the Rules of this Court, from the decision of a single Judge of this Court (Okwengu JA) dated 4<sup>th</sup> June, 2021. The ruling of the single Judge was delivered pursuant to an application for extension of time, made under Rule 4 of this Court's Rules, seeking to file an appeal out of time, against the ruling of the High Court of Kenya at Meru (Mabeya J.) delivered on 16<sup>th</sup> January, 2020.
2. The application was founded on grounds that the applicant filed his notice of appeal on 21<sup>st</sup> January, 2020; that his record of appeal was ready for filing, but due to the then government restrictions on movements occasioned by the Covid-19 Pandemic, the applicant's counsel was unable file the record of appeal within the statutory timeline; that the intended appeal was arguable; that the applicant stood



to lose the suit property, L.R. No. Meru/Municipality/Block/11/7, if his application was disallowed; and that his application was brought without undue delay.

3. The application was opposed. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed a replying affidavit dated 25<sup>th</sup> September, 2020. They averred that the applicant filed his notice of appeal on 21<sup>st</sup> January, 2020, and that the restriction on movement was imposed by the Government vide a gazette notice dated 6<sup>th</sup> April, 2020, which was 73 days after his notice of appeal was filed. That though the applicant contended that his record of appeal was always ready for filing, he failed to file the same within the statutory sixty days after lodging his notice of appeal. The respondents averred that the advocates formed part of the essential service providers who were exempted from the movement restrictions imposed by the government. The respondents were of the view that the delay in filing the record of appeal was as a result of the applicant's own indolence, and that the applicant was not keen to prosecute the intended appeal.
4. The 3<sup>rd</sup> respondent, in his replying affidavit dated 4<sup>th</sup> May, 2021, shared the same view as the 1<sup>st</sup> and 2<sup>nd</sup> respondents, and noted that the applicant had ample time to file his record of appeal prior to the restriction of movement occasioned by the Covid-19 pandemic.
5. The application was canvassed by written submissions. In their submissions, the parties reiterated the arguments outlined in their pleadings.
6. In dismissing the application, the learned single Judge of the Court noted that the only reason given by the applicant for the delay in filing the record of appeal was that although the record of appeal was ready for filing, his advocates were unable to do so due to the Covid-19 pandemic and the subsequent government restriction on movement. The learned Judge noted that the notice of appeal having been filed on 21<sup>st</sup> January, 2020, the applicant had sixty days to file his record of appeal, which period lapsed on 21<sup>st</sup> March, 2020, way before movement restrictions were imposed by the government. The learned single Judge of the Court further determined that the applicant's claim that he was bound to suffer irreparable loss if the Court failed to extend time for him to file the appeal was unfounded.
7. Aggrieved by this decision, the applicant lodged the reference before us. The applicant was aggrieved that the learned single Judge failed to consider the applicable principles for extension of time in light of the reasons given by the applicant for his failure to lodge the record of appeal in time. The applicant faulted the learned single Judge for failing to consider the broader interest of justice when she dismissed the applicant's application.
8. During the hearing of the application this Court heard oral submissions from Mr. Odego holding brief for Mr. Mugambi for the applicant, and Mr. Karuti for the 1<sup>st</sup> and 2<sup>nd</sup> respondents. There was no appearance for the 3<sup>rd</sup> respondent. This Court has considered the said submissions and the applicable law.
9. The decision whether to grant extension of time is a discretionary matter. The applicant is required to demonstrate that the learned single Judge of the Court disregarded a relevant matter, regarded an irrelevant matter or acted on misapprehension of evidence or applicable law. This Court in *John Koyi Waluke v Moses Masika Wetangula, James Kulubi Omwangwe & Electoral Commission of Kenya (Civil Appeal Application) 307 of 2009* [2010] KECA 174 (KLR) observed as follows:

“Having considered all that has been urged before us in this Reference we would say that we have stated time without number that in exercising the unfettered discretion under Rule 4 of this Court's Rules, a single judge of the Court is doing so on behalf of the whole Court, and the full bench of the Court would only be entitled to interfere with the exercise of discretion if it be shown that in the process of exercising the discretion, the single Judge has taken into



account an irrelevant matter which he ought not to have taken into account, or that he failed to take into account a relevant matter which he ought to have taken into account or that he misapprehended some aspect of the evidence and the law applicable or short of these, that his decision was plainly wrong and could not have been arrived at by a reasonable tribunal properly directing itself to the evidence and the law. It is not enough, for example, to show the full Court that had it been sitting in place of the single Judge, it would have arrived at a different result.”

10. In the present application, we are unable to discern any abuse or improper exercise of discretion by the single Judge. The applicant’s main reason for his failure to lodge the record of appeal in time was his plea that his previous counsel on record had been prevented from lodging the said record of appeal in Court due to the restrictions put in place by the Government during the Covid-19 Pandemic. As correctly held by the Single Judge, the sixty (60) days period that the applicant was required to lodge the record of appeal under Rule 84 (1) of the Court of Appeal Rules, had not expired before the said restrictions were put in place by the Government. This Court cannot therefore fault the learned single Judge for reaching the decision that she did.
11. The applicant failed to establish to our satisfaction that the learned single Judge took into account irrelevant matters or misapprehended some aspect of the evidence and the applicable law or arrived at a wrong decision taking into account all the facts of the case.
12. The application therefore lacks merit and is hereby dismissed with costs to the respondents.

**DATED AND DELIVERED AT NYERI THIS 19<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**W. KARANJA**

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**JUDGE OF APPEAL**

**JAMILA MOHAMMED**

.....

**JUDGE OF APPEAL**

**L. KIMARU**

.....

**JUDGE OF APPEAL**

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

*Signed*

Deputy Registrar

