



ABSA Bank Limited PLC (Formerly Barclays Bank Ltd) v Waithanji (Civil Application E046 of 2025) [2025] KECA 1627 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KECA 1627 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E046 OF 2025
MA WARSAME, JA
OCTOBER 9, 2025**

BETWEEN

ABSA BANK LIMITED PLC (FORMERLY BARCLAYS BANK LTD) APPLICANT

AND

SAMUEL KINGORI WAITHANJI RESPONDENT

(An application for extension of time to file an appeal out of time against the judgment of the High Court at Nakuru (Justice H.K. Chemitei) delivered on 23rd June 2022 in HCCA No. 104 of 2019)

RULING

1. The applicant has filed the instant application dated 15th April 2025 seeking extension of time to file a notice of appeal out of time under Rule 4 of the Court of Appeal Rules. The applicant seeks to challenge the judgment delivered on 23rd June 2022 by Hon. Justice H.K. Chemitei.
2. The judgment sought to be appealed from arose from a dispute between the parties concerning a banking transaction. On 9th April 2009, the applicant (then Barclays Bank) debited the sum of Kshs. 4.4 million from the respondent's account without notice, alleging that the money was proceeds from illegal transactions. The respondent challenged this unilateral action, and on 23rd June 2022, the High Court at Nakuru found the applicant's conduct unlawful and ordered them to reverse the unilateral decision of debiting the account, imposing a liability of Kenya Shillings Four Million Four Hundred Thousand (Kshs. 4,400,000/=) against the applicant.
3. The applicant filed a notice of appeal on 3rd August 2022, some 41 days after the judgment was delivered. The current application was filed on 15th April 2025, approximately three (3) years after the judgment.



4. The reasons for delay as stated on the face of the application are that the applicant was ready and willing to file the appeal; however, efforts to obtain certified typed proceedings from the registry have been unsuccessful despite diligent follow-up. The applicant alleges that the inordinate, undue and unreasonable delay was occasioned by failure of the High Court to issue them with a certified copy of typed proceedings.
5. In support of this contention, the applicant has annexed correspondence showing letters sent to the Deputy Registrar dated 20th December 2022, 24th May 2023, 20th November 2023, 23rd May 2024, 21st November 2024, and 21st March 2025 in a bid to follow up on the typed proceedings.
6. The respondent has filed a comprehensive replying affidavit dated 5th May 2025 opposing this application on several grounds. He avers that the application is malicious and in bad faith as it was filed shortly after he sought to execute the decree, describing it as an attempt to deny him the fruits of the judgment. The respondent further states that that investigative authorities found no fault on his part as he had not committed any offence as alleged, and that to date nobody has ever laid a claim against him.
7. The respondent also points out that the applicant filed a defective notice of appeal on 3rd August 2022 against the judgment delivered on 23rd June 2022 without the leave of the court, and that the applicant has failed to demonstrate how the intended appeal is arguable or provide satisfactory explanation for the delay and that lastly, the instant application seeks leave to file an appeal from a decision made on 23rd June 2022, a period of three years, which he characterizes as an abuse of the court process.
8. The principles governing applications for extension of time are well settled. As stated in *Nicholas Kiptoo Arap Korir Salat vs. The Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR, extension of time is not a right but an equitable remedy available only to a deserving party at the discretion of the court. The applicant bears the burden of laying a basis to the satisfaction of the court.
9. I have considered the application, the arguments advanced by both parties and the principles considered in application such as this. In my view, the applicant has failed to provide any reason why the notice of appeal was not filed within the statutory 14 day period as required by Rule 59(1) of the Court of Appeal Rules. The judgment was delivered on 23rd June 2022, yet no notice was filed until 3rd August 2022 already 41 days out of time. The first letter seeking typed proceedings was only sent on 20th December 2022, a full six months after the judgment was delivered.
10. As established in *Kidheka Mutisya Ngata v Emmanuel Ngande Nyoka & 3 others* [2016] eKLR, where there are delays in procuring typed proceedings, the time taken for typing and certification is normally excluded from computation of time, but only if the application for proceedings was made in writing within 30 days of the decision and a copy was served upon the respondent. The applicant has not demonstrated compliance with these requirements nor sought a certificate of delay as contemplated under Rule 82(2) of the Court of Appeal Rules.
11. The correspondence annexed to the application shows a pattern of follow-up letters over the years, but there is no evidence of what steps, if any, the applicant took between June 2022 and December 2022, or indeed what urgent steps were taken to file the notice of appeal as a precautionary measure. A diligent litigant would have filed the notice of appeal within time and then pursued the typed proceedings separately.



12. As this Court stated in *Motorways Kenya Limited v Kenya Engineering Workers Union* [2018] eKLR:
“lodgment of a notice of appeal is a matter of course, and a careful advocate would lodge the same as a matter of abundant caution soon after delivery of the judgment... it is the foundational document that gives jurisdiction to this Court.”
13. The respondent has arranged his affairs based on the unchallenged judgment for over three years. As noted in *Samuel Mbugua Githere v Kimungu* [1984] eKLR, a party is entitled to assume that when no notice of appeal is filed and served, the other party has accepted the High Court decision. The respondent’s assertion that this application was filed shortly after he sought to execute the decree suggests he had relied on the finality of the judgment and taken steps to benefit from it. Granting an extension of time at this stage would cause significant prejudice to the respondent who has conducted his affairs on the basis that the matter was concluded.
14. The explanation proffered being delay by the registry, while potentially excusable in appropriate circumstances, cannot justify the wholesale abandonment of statutory timelines, particularly where no certificate of delay has been sought and the applicant failed to take the basic precaution of filing a notice of appeal within the prescribed time.
15. The application is hereby dismissed with costs to the respondent.

DATED AND DELIVERED AT NAKURU THIS 9TH DAY OF OCTOBER 2025.

M. WARSAME

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

