



Nyaga & 78 others v Barclays Bank of Kenya Limited (Cause 1122 of 2018) [2025] KEELRC 2756 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2756 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1122 OF 2018
CN BAARI, J
OCTOBER 9, 2025**

BETWEEN

NAZARENE NYAGA & 78 OTHERS CLAIMANT

AND

BARCLAYS BANK OF KENYA LIMITED RESPONDENT

RULING

1. Before Court is the Applicants' Motion application dated 28th February, 2025, brought pursuant to Article 48, 50(1) and 159 of *the Constitution* of Kenya, Sections 1A, 1B, 3A of the *Civil Procedure Act* and Order 51 Rule 1 of the Civil Procedure Rules 2010. They seek the following orders: -
 - a. Spent
 - b. That this Honorable Court be pleased to extend time to the Applicants herein for lodging a Notice of Appeal out of time through payment of the requisite Court fees, against the Judgment of the Court delivered on 12th November 2024, and the Notice of Appeal dated 14th November, 2024 be deemed to be duly filed and served.
 - c. That the Claimants' Notice of Appeal dated 14th November 2024, and the letters bespeaking typed proceedings filed in Court by the Applicants herein be deemed to be properly lodged.
 - d. That the Court be pleased to make such further Orders as it deems fit and just; and
 - e. That the costs of this Application be provided for.
2. The application is based on the grounds on the face of the Motion and the Supporting affidavit of Hezbon O. Ooko Counsel on record for the Applicants. The crux of the motion is that on 12th November 2024, this Honourable Court (Rika J) delivered a Judgment dismissing the Claimants' Amended Claim dated 3rd March 2023 with costs and that being aggrieved by the said judgment, the Applicants' through their advocates prepared and filed in the Court tracking system, a Notice of



- Appeal dated 14th November, 2024 with an intention to lodge an appeal against Judgment of this Court at the Court of Appeal.
3. The Applicants aver that on 13th November, 2024, they, through their Advocates prepared and filed a letter dated 13th November, 2024 requesting for a certified copy of Judgment and Decree, and subsequently, on 27th November, 2024, they prepared and filed in court a letter bespeaking typed proceedings dated 27th November 2024.
 4. They aver that at the time of filing the said Notice of Appeal and the letters, the Claimants' Advocates inadvertently failed to make payment for the filing fees of the said documents and only became aware of the pending fees on 27th February, 2025 while following up on the typed proceedings, and immediately rectified the situation by paying the requisite filing fees for the lodging of the Notice of appeal and the letters to the Court.
 5. The Applicants therefore seek that the Notice of Appeal dated 14th November 2024 filed in Court by the Applicants herein, be deemed to be properly lodged through payment of the requisite Court fees as the inadvertent mistake by the Applicants' counsel in failing to pay the filing fees was a procedural error.
 6. That the Claimants are desirous of filing an appeal against the said Judgment, and have already prepared a Memorandum of Appeal containing ten (10) grounds of appeal, which they believe have high chances of success, and unless this Court intervenes by granting the Orders as sought, they risk being deprived of their right to appeal against the Judgment, which they contend is manifestly erroneous.
 7. The Respondent opposed the application vide grounds of opposition dated 26th March, 2025, wherein, it argues that a period of over 3 months has elapsed since the delivery of the Judgment of this Honourable Court, and that the Applicants have not offered any reason or explanation as to why they did not make payment when they uploaded the Notice of Appeal.
 8. It avers further that contrary to Rule 77(1) of the Court of Appeal Rules, the Applicants did not serve the Notice of Appeal which they failed to pay requisite filing fees for, and have also not offered any reason or explanation as to why they did not serve the Notice of Appeal and have not disclosed the failure to serve the Notice in the Application.
 9. The Respondent states that the Applicants did not copy the Respondent's advocates with the letter bespeaking the typed proceedings. It avers further that in the event the Notice of Appeal is admitted, the proviso of Rule 82(1) will not be available for purposes of computing time for filing of a Memorandum and Record of Appeal against the Judgment delivered on 12th November, 2025.
 10. It avers that the application is an abuse of the Court process.
 11. Parties canvassed the motion by way of written submissions, and submissions were received from both parties and have been duly considered.

Determination

12. I have considered the application, the grounds of opposition and the parties' submissions. The issue for determination is whether the Applicants are deserving of the orders sought.
13. Section 79G of the *Civil Procedure Act*, states thus on the power of the Court to enlarge time: -

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period



any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

14. Enlargement of time is an equitable remedy and not a right of a party, hence the party that seeks such enlargement, bears the burden of satisfying the court that the application is worthy of the exercise of the court’s discretionary power. (See Nicholas Kiptoo Arap Korir Salat V Independent Electoral and Boundaries Commission & 7 Others, SC Application No. 16 of 2014(2014) eKLR).
15. The principles that guide the grant or otherwise of an application such as this, are the length of the delay, the reason (s) for the delay, the possible chances of the appeal succeeding if the leave is granted, and the prejudice to the Respondent stands to suffer if the leave is granted.
16. The judgment herein, was delivered on 12th November, 2024 and the instant motion filed on 28th February, 2025, about to three months later. The Applicants’ position is that a notice of appeal was lodged on 13th November, 2024 the day after the judgment was delivered, but that their counsel inadvertently failed to pay for the notice, and it was not until 27th February, 2025, that they realized that the payment had not been made.
17. In the case of Alibhhai Musajee v Shariff Mohammed Al-Bet Civil Appeal No. 283 of 1998 the Court of Appeal opined: -

“Whereas the Civil Procedure Act allows for extension of time for filing appeal, if good and sufficient cause is shown, failure to act does not constitute a good or sufficient cause.”
18. The failure to pay for the notice of appeal was no doubt a mistake of the Applicants’ counsel. In common practice a litigant would be excused for mistake or oversight on the part of Counsel. In Kariuki v Wangeci & 7 others (Civil Application E250 of 2023) [20241 KECA 1692 (KLR) (22 November 2024)] also cited by the Applicants, the Court of Appeal held thus: -

“In this case the learned Single Judge did not address the issue of the advocate’s mistake as a ground for extending time. There is no doubt that an advocate’s mistake may, on some occasions, constitute a ground for extending time....”
19. The Court notes that the Applicants through their counsel promptly acted upon realization that the notice of appeal and the requests for proceedings were not paid for, and which fact is uncontroverted.
20. Guided by the foregoing decisions of Superior Courts and more so the Supreme Court’s decision in Nicholas Kiptoo Arap Korir Salat (supra), I find and hold that the Applicants have sufficiently laid a basis for the extension of time, while the Respondent has not demonstrated that it would suffer prejudice by such extension. I thus allow the Applicants’ application as follows: -
 - a. That an order be and is hereby issued extending time for the Applicants to file an Appeal out of time against the Judgment delivered herein on 12th November 2024 through payment of the requisite Court fees.
 - b. That the Notice of Appeal dated 14th November, 2024 be and is hereby deemed duly filed.
 - c. That costs shall abide the appeal.
21. It is ordered.



**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 9TH
DAY OF OCTOBER, 2025.**

C. N. BAARI

JUDGE

Appearance:

Mr. Ooko h/b for Mr. Kanjama SC for the Claimants/Applicants

Mr. Biko Angwenyi Present for the Respondent

Ms. Esther S-C/A

