



Twiga Chemical Industries Limited v Commissioner of Customs Services (Civil Appeal (Application) 227 of 2019) [2025] KECA 1854 (KLR) (7 November 2025) (Ruling)

Neutral citation: [2025] KECA 1854 (KLR)

REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) 227 OF 2019
F SICHALE, JA
NOVEMBER 7, 2025

BETWEEN

TWIGA CHEMICAL INDUSTRIES LIMITED APPELLANT

AND

COMMISSIONER OF CUSTOMS SERVICES RESPONDENT

(Being an Application for Extension of Time to file Record of Appeal against the judgment of the High Court of Kenya delivered on 5th March 2019 in (Income Tax Appeal No. 4 of 2015))

RULING

1. Twiga Chemical Industries Limited (“the applicant”) herein, has by the motion on notice dated 24th July 2025, brought pursuant to the provisions of Rule 4 of the Court of Appeal Rules 2022, invoked the jurisdiction of this Court sitting as a Single Judge seeking the following orders:
 - “i. Spent.
 - ii. That this Honourable Court be pleased to extend time for lodgment of the Record of Appeal from 11th May 2019 to 27th May 2019.
 - ii. That the Record of Appeal dated 24th May 2019 and lodged in the Court of Appeal on 27th May 2019 be deemed as duly and properly filed and served.
 - iii. That the costs of this motion be in the cause.”
2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by Sandeep Sharma, the Managing Director of the applicant herein who deposed inter alia, that being dissatisfied with the decision of the High Court in Income Tax Appeal No. 4 of 2025, Twiga Chemical Industries Limited v Commissioner of Custom Services, they had instructed their then advocates on record to



lodge an appeal against the said decision; and that timeously, a Notice of Appeal dated 11th March 2019 was filed and served upon the respondent on the same date.

2. That, upon receipt of the typed proceedings on 22nd May 2019, their advocates acted expeditiously and prepared a Record of Appeal dated 24th May 2019, which was duly filed on 27th May 2019 and subsequently served on the respondent's counsel on the same date.
3. That, the appeal was eventually listed for hearing on 7th July 2025, but before hearing commenced, the Court suo moto raised an issue as to whether the appellant had a right of appeal to the Court of Appeal as the appeal was a second appeal. Counsel then sought and were granted time to consider the issue raised by the Court, particularly in view of the fact that the respondent had not raised any objection on the matter and had in fact expressed readiness to proceed with the hearing.
4. It was further deposed that the Record of Appeal was filed on 27th May 2019, which was 16 days outside the 60 day period prescribed by Rule 82 of the Court of Appeal Rules and that further, the respondent had never raised any objection regarding the timelines or validity of the appeal but on the contrary had expressed its readiness to proceed to hearing and that as such, the delay in filing the Record of Appeal was neither deliberate nor inordinate.
5. There was no response on the part of the respondent despite having been served with a copy of the application and the hearing notice on 24th July and 1st October 2025, respectively electronically.
6. The appellant in their submissions basically reiterated the contents of the supporting affidavit to the motion and submitted that at no point had the respondent challenged the validity of the timeliness of the appeal but on the contrary, the respondent had consistently expressed a willingness to proceed with the hearing of the matter and that further, no prejudice would be occasioned to the respondent should the extension be granted as the delay was minimal, reasonably explained and promptly remedied.
7. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the applicant's submissions, the cited authorities and the law.
8. The principles upon which this Court exercises its discretion pursuant to Rule 4 to extend time or not are now old hat. The Court has wide and unfettered discretion in deciding whether to extend time or not. However, in exercising its discretion, the Court should do so judiciously.
9. See *Mwangi vs. Kenya Airways Limited* (2003) KLR 486 where this Court stated thus:

“Over the years, the Court has set out guidelines on what a single Judge should consider when dealing with an application for extension of time under Rule 4 of the Rules. For instance, in *Leo Sila Mutiso V 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 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.”
11. In the instant case and as regards the length of the delay, the impugned judgment was delivered 5th March 2019, whereas the Notice of Appeal was filed on 11th March 2019, which was well within time



whereas the Record of Appeal was filed on 27th May 2019, which was 16 days late which delay I do not consider to be inordinate from the circumstances of this case.

12. Turning to reasons proffered for failing to file the appeal on time, it was contended by the applicant that the appeal was scheduled for hearing on 7th July 2025, but before the hearing commenced the Court suo moto raised an issue regarding the validity of the appeal and specifically whether the appellant had a right of appeal to the Court of Appeal as the appeal was a second appeal.
13. That, the appellant sought and was granted time to consider the issue raised by the Court and subsequently established that the right of appeal to the Court of Appeal in tax related matters was anchored in Section 54 of the [Tax Procedures Act](#), 2015 and Rule 21 of the Tax Appeals Tribunal (Appeals to the High Court) Rules 2015, with the former prescribing a 30 day period and the latter prescribing a 14 day period for instituting an “appeal” to the Court of Appeal against a decision of the High Court and it remained unclear whether the said timelines refer to the filing of a Notice of Appeal or to lodgment of the Record of Appeal.
14. Given the circumstances of this case, I consider the reasons given for the delay to be reasonable/ plausible and ultimately therefore, I am of the considered opinion that the delay herein has been sufficiently explained to the satisfaction of this Court.
15. As to the arguability or otherwise of the intended appeal, it would not be in my place to make a determination on the same sitting as a Single Judge and I will therefore not delve into this issue.
16. Finally on prejudice, I am satisfied that the respondent will not suffer any prejudice if the instant application is allowed as they did not even respond to the motion despite having been served with the same.
17. Taking into totality all the circumstances of this case, I am of the considered view that the applicant has demonstrated and satisfied the existence of the principles for consideration in the exercise of my unfettered discretion pursuant to Rule 4 of this Court to extend time.
18. Accordingly, the applicant’s motion dated 24th July 2025, is merited and the same is hereby allowed as prayed.
19. The costs of this motion shall abide the outcome of the intended appeal.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF NOVEMBER, 2025.

F. SICHALE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

