



REPUBLIC OF KENYA



KENYA LAW
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Green Hardwares Limited & another v Mabati Rolling Mills Limited (Civil Application E297 of 2025) [2025] KECA 1965 (KLR) (21 November 2025) (Ruling)

Neutral citation: [2025] KECA 1965 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E297 OF 2025
F SICHALE, JA
NOVEMBER 21, 2025**

BETWEEN

GREEN HARDWARES LIMITED 1ST APPLICANT

GAFEN JACKTON ONYANGO OCHIENG 2ND APPLICANT

AND

MABATI ROLLING MILLS LIMITED RESPONDENT

(Being an Application for Extension of Time to file an Appeal against the Ruling of the Nairobi High Court Commercial and Tax Division (Njoki Mwangi J), dated 14th October 2024 in (Nairobi High Court Commercial & Tax Division Case No. E441 of 2019)

RULING

1. Green Hardwares Limited and Gafen Jackton Onyango Ochieng (“the applicants herein”) have vide a motion on notice dated 12th May 2025, brought under Rule 4 of the Court of Appeal Rules sought the following orders:
 - “i. Spent.
 - ii. This Honourable Court be pleased to extend time and grant leave to the applicants herein to file notice of appeal against the ruling delivered on 14th October 2024 by Honourable Justice Njoki Mwangi in Nairobi High Court Commercial and Tax Division Civil Suit No. E441 of 2019.
 - iii. Subject to the granting of prayer d (sic) above, this Honourable Court be pleased to set timeframes within which the applicants would file memorandum of appeal together with the record of appeal.



iv. Costs of this application be provided for.”

2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by the 2nd applicant who deposed inter alia that the matter had been referred to mediation for parties to attempt an out of court settlement which mediation efforts failed, paving for hearing of the matter before the Superior Court.
3. That as a consequence, they filed an application dated 12th March 2024, seeking to have the matter transferred to Bungoma on the grounds that they were residents of Bungoma and that the transaction took place in Bungoma and as such, it would be costly to litigate in Nairobi when there exists a court of equal status in Bungoma, which application was dismissed on 14th October 2024.
4. He further deposed that they were never informed of the ruling and they only learnt of the same on 21st March 2025, when they were notified that the matter was scheduled for hearing; necessitating them to change their advocates and that by the time they learnt of the ruling, the time for filing the appeal had lapsed.
5. He further deposed that disallowing the application would gravely prejudice them as they will be condemned to suffer mistakes of their counsel who was then on record thus denying them the right to a fair hearing.
6. The motion was opposed vide a replying affidavit sworn on 28th May 2025, by Job Mwangi Thiga; advocate who has the conduct of this matter on behalf of the respondent who deposed inter alia that there had been inordinate delay in filing the instant application as the impugned ruling was delivered on 14th October 2024, yet the application was filed on 12th May 2025, which was almost 7 months later and no reasonable explanation had been given for the delay.
7. He further deposed that the instant application was only meant to engage the parties in protracted litigation to delay the hearing and determination of the primary suit thus prejudicing the respondent’s access to justice.
8. It was submitted for the applicants that there had been a delay of about 7 months, which delay had been explained satisfactorily; the same being attributable to non-communication by the applicants erstwhile counsel on time and by the inability of the applicants getting the ruling in good time, which ruling was obtained on 5th May 2025 after obtaining the file from the previous advocates and that as such, there was a plausible reason and explanation for the delay. For this proposition, reliance was placed on the case of *Kariuki v Wangechi & 7 Others* [2024] KECA1692 (KLR).
9. Turning to prejudice, it was submitted that the High Court in Bungoma was not clogged with many matters as *Milimani* and that as such, no prejudice on delay would be suffered by the respondent. 10. On the other hand, it was submitted for the respondent that there had been inordinate delay of about 7 months and there had been no reasonable explanation given for the same and that indeed the applicants had made a confession in their supporting affidavit that the cause of the delay was attributable to their advocate’s negligence and failure to prosecute the matter extensively.
11. Turning to prejudice, it was submitted that the instant application was meant to take away the respondent’s right to enjoy the fruits of the ruling dated 30th October 2024, which would greatly prejudice the respondent’s legitimate expectation of conclusion of the matter.
12. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the replying affidavit, the rival submissions by the parties, the cited authorities and the law.



13. The principles upon which this Court exercises its discretion pursuant to Rule 4 to extend time or not have now taken a well beaten path. 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.
14. See *Mwangi v 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.”
13. In the instant case and as regards the length of the delay, the impugned ruling was delivered on 14th October 2024, whereas the instant motion was filed on or about 12th May 2025.
14. There has therefore been a delay of about 7 months, which delay from the circumstances of this case I do not consider to be inordinate.
15. Turning to reasons proffered for failing to file the appeal on time, it was contended by the applicants that they were never informed of the dismissal of the application to transfer the matter to Bungoma High Court and that they only learnt of the same on 21st March 2025, necessitating them to change their advocates by which time the period within which to file an appeal had lapsed and that they should not be condemned because of the mistakes of their advocates.
16. I consider the reasons given for failing to file the appeal on time to be plausible/reasonable as in my opinion it would very unfair the visit the mistakes of the applicants former advocates on the applicants.
13. 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.
14. As to the arguability or otherwise of the intended appeal, I cannot make a determination of this issue sitting as a Single Judge and I will therefore not delve further on the same.
15. Finally on prejudice, I am satisfied that the applicants will stand to suffer prejudice if the instant motion is not allowed as they will have been completely shut out from the seat of justice.
16. Taking into totality all the circumstances of this case, I am of the considered view that the applicants have 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.
17. Accordingly, the applicant’s motion dated 12th May 2025, is merited and the same is hereby allowed as prayed.
18. The applicants shall proceed to file the appeal within a period of 30 days from the date of this ruling, failure to which these orders shall stand vacated.



19. The costs of this motion shall abide the outcome of the intended appeal.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF NOVEMBER, 2025.

F. SICHALE

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

