



REPUBLIC OF KENYA



KENYA LAW
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**Shah v Prime Bank Limited (Miscellaneous Civil Application
E060 of 2025) [2025] KECA 2008 (KLR) (18 November 2025) (Ruling)**

Neutral citation: [2025] KECA 2008 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
MISCELLANEOUS CIVIL APPLICATION E060 OF 2025
MS ASIKE-MAKHANDIA, JA
NOVEMBER 18, 2025**

BETWEEN

SHAKUNT RAJNIKANT SHAH APPLICANT

AND

PRIME BANK LIMITED RESPONDENT

(Being an application for enlargement of time for the lodgment of a notice of appeal and the filing of a memorandum and record of appeal for an intended appeal from the judgment and a decree of the High Court of Kenya at Kisumu (Mwamuye, J.) dated 4th February, 2025 in HCCA No. E001 of 2024)

RULING

1. By the application dated the 26th March, 2025, “the application”, the applicant seeks orders for the extension or enlargement of time to validate the filing on the 20th February 2025 of a notice of appeal from a decision of the High Court of Kenya at Kisumu rendered on the 4th February 2025 and to enable the filing of a memorandum and record of appeal for the intended appeal. The application is supported by the affidavit of, Shakunt Rajnikant Shah, “the applicant”. The application is grounded on Section 3 and 3A of the *Appellate Jurisdiction Act*, Rule 4 and 44 of the court of appeal rules and all other enabling Provisions of Law.
2. According to the applicant, the notice of appeal dated the 18th February 2025 was served upon counsel for the respondent on the same date within the time prescribed by the rules but had been lodged just two days after the expiry of time. The explanation, as set out in the supporting affidavit and the revealed by documents exhibited thereto, show the cause for the delay to have been on account of circumstances beyond the control of the applicant, and show further that every reasonable effort was made by the applicant’s counsel to ameliorate the circumstances in order to keep the applicant within the times prescribed by this court’s rules.



3. The judgment and decree, the subject of the intended appeal was delivered on the 4th February 2025 by Mwamuye, J. who indicated to counsel for the applicant that the written decision would be available on the Judiciary's E-filing and Case Tracking System ("the CTS") by close of business of the following day and when no judgment was found to have been uploaded, a letter was written on the 6th February 2025 to the Deputy Registrar of the High Court at Kisumu formally requesting for its issuance thereof.
4. A week later and with still no judgment uploaded to the CTS, a message was posted to the Kisumu Courts Notice Board Group on the WhatsApp digital chat platform on the 13th February, 2025, which elicited a response by direct communication to counsel from the judiciary by which the reason for the delay in uploading the judgment was explained.
2. On the 18th February 2025, the penultimate day for the lodgment of a notice of appeal under Rule 77 of this Court's Rules, the notice was prepared and dispatched to counsel for the respondent but all efforts to submit the notice for filing through the CTS failed when it was discovered that no case outcome was shown in the matter wherefore the CTS offered no valid and functioning options for the filing of the notice, a development shared with opposing counsel by email.
3. On the 20th February 2025, the case outcome was found to have been updated on the CTS whereupon the notice was duly lodged on the same date, albeit two days out of time, leaving any record of appeal liable to be inherently defective as premised on a notice filed out of time and the record itself being well out of time and thus inherently defective if filed without an order for enlargement of time.
4. All these narrations of events have not been discounted by Prime Bank Limited "the respondent" as it has not filed any papers in opposition to the application, though the record shows that the respondent was served with the hearing notice for today by this Court on 4th November 2025, if the copy thereof in the file is anything to go by. I must then take it that what has been stated above by the applicant it as true. The foregoing notwithstanding, I must still determine whether, the applicant has brought himself within the perimeters for the grant of extension of time.
2. The principles upon which this Court may grant an application under Rule 4 have long been well established: it is essentially discretionary and the court will, in exercising discretion, "take into account 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." See *Thuita Mwangi v Kenya Airways Ltd* [2003] eKLR.
3. In this case the two-day delay in the lodgment of the notice of appeal cannot be said to be inordinate. In any event, it has been sufficiently explained. The failure to immediately upload the judgment and update the status of the case outcome in the CTS caused the system to fail to provide any valid and functioning options for the filing of the notice.
4. Further the application was presented 29 days after the lodgment out of time of the notice of appeal, a period that cannot also be described as inordinate delay given the size of the record of the superior court proceedings that supports the application and the time required to prepare the record of the application.
5. Regarding the possible merits of the intended appeal, the applicant has pointed out mistakes made by the High Court that he intends to pursue in this court. For instance, he claims that the court failed to appreciate that the respondent's disclosure of the appellant's personal banking details, which had nothing to do with his mother's estate, constituted a breach of his personal data. This cannot be termed as a frivolous ground.



6. In the end, I am satisfied that the applicant is deserving of the exercise of my unfettered discretion in his favour to enable him to pursue his intended appeal. Accordingly, I allow the application and direct the applicant to process his appeal within the next twenty-one days from the date of this ruling. Costs shall abide the outcome of the intended appeal.

DATED AND DELIVERED AT KISUMU THIS 18TH DAY OF NOVEMBER, 2025.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

