



Multichoice Kenya Limited v Inspector General of Police & 8 others (Civil Application E230 of 2025) [2025] KECA 2262 (KLR) (19 December 2025) (Ruling)

Neutral citation: [2025] KECA 2262 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E230 OF 2025
F SICHALE, JA
DECEMBER 19, 2025**

BETWEEN

MULTICHOICE KENYA LIMITED APPLICANT

AND

INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT

CEMENTERS LIMITED 3RD RESPONDENT

STANLEY KEBATHI 4TH RESPONDENT

STANLEY KEBATHI T/A ARCHPLANS 5TH RESPONDENT

KARIUKI MUCHEMI 6TH RESPONDENT

INTERCONSULT ENGINEERS LIMITED 7TH RESPONDENT

WILSON MUNYU KARABA 8TH RESPONDENT

CONAPEX CONSULTING ENGINEERS LIMITED 9TH RESPONDENT

(Being an Application for Extension of Time to file an Application for Certification of a matter that involves General Public Importance against the Judgment of the Court Appeal (Kiage, Ali-Aroni & Achode JJ.A) dated 24th January 2025 in (Nairobi Civil Appeal No. E604 of 2023 as consolidated with Civil Appeal No. E676 of 2023)

RULING

1. Multichoice Kenya Limited (“the applicant” herein) has vide a motion on notice application dated 9th April 2025, brought pursuant to the provisions of Article 163 (4) of *the Constitution* of Kenya 2010,



Rule 4, 12, 41 (2) and 44 of the Court of Appeal Rules, invoked the jurisdiction of this Court sitting as a Single Judge seeking the following orders:

- i. Spent.
 - ii. This Honourable Court be pleased to enlarge the time under Rule 4 of the Court of Appeal Rules, allowing the filing out of time of an application under Rule 41 (2) of the Court of Appeal Rules.
 - ii. Any other orders which this Honourable Court may in the circumstances deem fit.”
2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by Eddie Omondi, counsel who has the conduct of this matter on behalf of the applicant who deposed inter alia that the applicant apologizes to this Honourable Court for filing the instant motion out of time contending that the same was due to the following reasons; that the shareholder of the applicant MultiChoice Africa Holdings B.v, was out of jurisdiction and this being a matter that needed apprising and instructions from the board, it took an unusually longer time to seek instructions.
 3. That, on a somber note, George Mbaye a partner in the firm had taken off time to attend to his terminally ill father and eventually lost him in January 2025 and this greatly affected the availability and work schedule of the partners as being friends, they were deeply involved in the burial ceremonies.
 4. That, they had filed the application for Certification on 8th April 2025, but had misguidedly sought extension of time within the same application and the Deputy Registrar directed that the omnibus application be separated and that they subsequently refiled the instant application within 1 day.
 5. He further deposed that the applicant had an arguable appeal as it raises substantial questions of grave public importance under Article 163 (4) (b) of *the Constitution*, as it pertains to the scope of prosecutorial powers and interpretation of Section 193A of the Criminal Procedure Code.
 6. There was no response on part of the respondents despite having been served with a copy of the application on diverse dates in the months of April and May 2025 and a copy of the hearing notice on 14th October 2025.
 7. It was submitted for the applicant that the instant application was filed on 10th April 2025, which was approximately 6 weeks after the lapse of the prescribed period, which delay was not inordinate and was excusable in the circumstances.
 8. It was further submitted that the reasons for the delay in filing the application was due to exceptional circumstances affecting Mr. George Mbaye, counsel who has the conduct of this matter on behalf of the applicant who had been away attending to his terminally ill father who later passed on.
 9. It was thus submitted that the delay was not intentional as the applicant had profusely apologized to the Court for the same.
 10. It was further submitted that the applicant had an arguable appeal as the decision of the Honourable Court raises substantial questions of grave public importance pertaining to the use and abuse of prosecutorial powers and interpretation of Section 193A of the Criminal Procedure Code.
 11. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the applicant’s submissions, the cited authorities and the law.
 12. 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.



13. See Patel v Waweru And 2 Others[2003] KLR 361 at pp. 362-3 where this Court had the following to say in respect to Rule 4 of the Court of Appeal Rules:

“This is a matter in which the learned single Judge was called upon to exercise his unfettered discretion under rule 4 of the Rules of this Court. All that the applicant was required to do was to place sufficient material before the learned single Judge explaining the reason for what was clearly an inordinate delay. How does a single Judge exercise his discretion” In Leo Sila Mutiso v. Rose Hellen Wangari Mwangi– Civil Application no. NAI. 251 of 1997 this Court stated:-

“It is now settled that the decision whether or not to extend the 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”

14. In the instant case and as regards the length of the delay, the impugned judgment was delivered on 24th January 2025. Pursuant to Rule 41 (2) of the Court of Appeal Rules 2022, the instant motion ought to have been filed within 30 days from the date of the impugned judgment i.e. on 24th February 2025.
15. The same was however not filed until 10th April 2025. There has therefore been a delay of about 45 days which from the circumstances of this case I do not consider to be inordinate.
16. Turning to reasons proffered for failing to file the appeal on time, it was contended inter alia that the same was due to exceptional circumstances affecting Mr. George Mbaye counsel for the applicant who had been away attending to his terminally ill father who later passed on.
17. This Court further takes cognizance of the fact that the applicant had initially filed an application for Certification on 8th April 2025, and further sought extension of time within the same application, pursuant to which the Deputy Registrar directed that the 2 applications be separated, further compounding the delay in this matter.
18. From the circumstances of this case, I consider the reasons given for failing to file the application on time to be plausible/reasonable and I am of the considered opinion that the delay herein has been sufficiently explained to the satisfaction of this Court.
19. 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 into the issue.
20. Finally on prejudice, it has not been demonstrated the prejudice that the respondents will stand to suffer if the instant motion is allowed as in any event they have not opposed the application despite having been served with a copy of the same.
21. 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.
22. Accordingly, the applicant’s motion dated 9th April 2025, is merited and the same is hereby allowed as prayed.
23. The applicant shall proceed to file the application for Certification within a period of 30 days from the date of this ruling failure to which these orders shall stand vacated.



24. The costs of this motion shall abide the outcome of the application for Certification.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF DECEMBER 2025.

F. SICHALE

JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

