

**IN THE COURT OF
APPEAL AT
NAKURU**

**(CORAM: WARSAME J.A. (IN
CHAMBERS))**

CIVIL APPLICATION NO. E104 OF 2025

BETWEEN

**JOHN CHEPKOROS MOINDI
T/A SINENDE WHOLESALERS.....APPLICANT**

AND

**TRANSNATIONAL BANK OF KENYA LTD.....1ST
RESPONDENT SANJOMU AUCTIONEERS.....
2ND RESPONDENT**

(An application for extension of time to serve a Notice of Appeal and Record of Appeal out of time against the judgment of the High Court at Narok (Hon. Justice Charles Kariuki) delivered on 26th June, 2025

in

HCCC No. 12 of 2018)

R U L I N G

1. The applicant has filed the instant application dated 15th October 2025 seeking leave to serve the Notice of Appeal dated 1st July 2025 and the Record of Appeal dated 25th August 2025 out of time under **Rule 4** of the Court of Appeal Rules. The applicant seeks to challenge the judgment

delivered on 26th June, 2025 by Hon. Justice Charles Kariuki.

2. According to the applicant's supporting affidavit, he filed a Notice of Appeal on 1st July 2025 within the prescribed timelines, and filed the Record of Appeal on 5th September 2025 in compliance with the Court of Appeal Rules.

3. The reasons for delay as stated on the face of the application are that the applicant inadvertently served both documents to incorrect email addresses. Specifically, on 1st July 2025, the Notice of Appeal was served to *kalebadvi@gmail.com* instead of *kalebadvo@gmail.com* for Kale Maina & Bundo Tich Advocates LLP, and to *maamadvocates.kt@gmail.com* instead of *maamadvocates.ktl@gmail.com* for Mbugua Atudo & Macharia Advocates. On 5th September 2025, the Record of Appeal was similarly served to the same incorrect email addresses. The applicant attributes these errors to honest and unintentional typographical mistakes. The applicant discovered this error upon receipt of the Respondents' Notice of Sale dated 14th October 2025, when his advocates were in the process of retrieving proof of service in order to file an application for stay pending appeal.

4. The applicant contends that the mistake was not deliberate and was occasioned by a typographical error, that the Respondents have commenced execution proceedings posing an imminent risk of irreparable loss if the execution proceeds before the appeal is heard and determined, and that it is in the interest of justice that leave be granted to enable the applicant to prosecute the appeal.
5. The 1st Respondent has filed a comprehensive replying affidavit dated 11th November 2025 opposing this application on several grounds. First, the respondent contends that contrary to the applicant's assertion, the Notice of Appeal dated 1st July 2025 was not filed within the prescribed timelines but was instead filed on 28th July 2025 and uploaded in the case tracking system on 29th July 2025 at 8:35 am, which was fourteen (14) days after the prescribed period had elapsed. Evidence in the form of a printout from the case tracking system has been annexed to support this contention.
6. Second, the respondent alleges that the service on wrong email addresses was deliberate or that counsel intentionally

disregarded the return notifications when service was effected on the wrong email addresses on two separate occasions. Third, the respondent contends that the applicant only became interested in prosecuting the appeal after being served with the redemption notice dated 14th October 2025, and that the instant application constitutes an abuse of court process.

7. The principles governing applications for extension of time are well settled. As stated in **Abdul Aziz Ngoma vs. Mungai Mathayo [1976] eKLR**, this Court's discretion to extend time under rule 4 only comes into existence after 'sufficient reason' for extending time has been established and it is only then that other considerations such as the absence of any prejudice and the prospects or otherwise of success in the appeal can be considered. As further elaborated in **Fakir Mohamed vs. Joseph Mugambi & Two Others, Civil Application No. Nai. 332/04**, the period of delay, the reason for the delay, the chances of the appeal succeeding, the degree of prejudice to the respondent, and the importance of compliance with time limits are all relevant

factors to be considered.

8. I have considered the application, the arguments advanced by both parties and the principles applicable to applications of this nature. The question is whether the applicant has demonstrated sufficient reason to warrant the grant of leave to serve the Notice of Appeal and Record of Appeal out of time.
9. From the respondent's contention, supported by documentary evidence from the case tracking system, the Notice of Appeal was filed outside the prescribed period. **Rule 77(2)** of the Court of Appeal Rules, 2022 provides that the Notice of Appeal is to be lodged within fourteen (14) days after the date of the decision. The judgment was delivered on 26th June 2025, meaning the deadline for lodging was 10th July 2025. The respondent has produced evidence showing that the Notice of Appeal was uploaded to the case tracking system on 29th July 2025 at 8:35 am, well beyond the prescribed period. The applicant has not rebutted this evidence with any documentation showing that the documents were filed in a timely manner even though they claim that they did so.

10. The applicant has annexed to the supporting affidavit copies of email correspondence showing that bounce notifications were indeed received from the Mail Delivery Subsystem. The evidence shows that on 1st July 2025, after sending the Notice of Appeal at 3:20 PM, counsel received a bounce notification at 5:21 PM, clearly indicating 'Address not found' and stating that the email does not exist. This notification explicitly identified the incorrect email address kalebadvi@gmail.com. Similarly, on 5th September 2025, after sending the Record of Appeal at 5:42 PM, counsel received an immediate bounce notification for the same incorrect email address.

11. Even more damning is the unexplained three month delay from receipt of the first bounce notification on 1st July 2025 until the filing of the instant application on 15th October 2025. During this entire period, counsel had actual knowledge that service had failed, yet took no steps to effect proper service or to verify that the respondents were aware of the appeal. This prolonged inaction cannot be excused by reference to typographical errors, counsel knew the service

had failed and chose to do nothing about it.

12. The respondent's contention that the applicant only became interested in prosecuting this appeal upon receipt of the redemption notice dated 14th October 2025 seems more plausible and is borne out by the conspicuous timeline of events.

13. In the end, the application must fail, the application is hereby dismissed with costs to the Respondent.

Dated and delivered at Nakuru this 16th day of January, 2026.

M. WARSAME

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR