

IN THE COURT OF
APPEAL AT
NAIROBI

(CORAM: JAMILA MOHAMMED, JA (IN
CHAMBERS)) CIVIL APPEAL (APPLICATION) NO.
E552 OF 2025 BETWEEN

CHASE BANK LIMITED
(IN LIQUIDATION).....APPLICANT

AND

MORVEN DEVELOPERS LIMITED.....RESPONDENT

(Being an application for leave to extend time to file the Record
of Appeal in an appeal against Ruling of the High Court at
Nairobi

(F. Mugambi J.) dated 27th February

2025 in

Commercial Case No. 3410 OF 2024)

RULING

1) **Chase Bank Limited (In Liquidation)** (the applicant) moved this Court by a Notice of Motion dated 22nd July 2025, expressed to be brought under **Sections 3A** and **3B** of the **Appellate Jurisdiction Act** and **Rules 4** and **84** of the **Court of Appeal Rules, 2022**, seeking orders in the main:

(a) That time be extended for lodging the Memorandum and Record of Appeal against the ruling and orders of the High Court

delivered on 27th February 2025;

- (b) That the Memorandum and Record of Appeal filed on 16th July 2025 be deemed as properly filed and served; and
(c) That the costs of the application be in the appeal.

Morven Developers Limited is the respondent herein.

2) The application is supported by the affidavit of **John Masega Ombasa (Mr.**

Ombasa) (the applicant's Liquidation Agent) who deponed *inter alia* that the Notice of Appeal was filed on 11th March 2025. That the delay in lodging the memorandum and record of appeal was occasioned by internal administrative processes which were circumstances beyond the applicant's control. Further, that the delay in lodging the memorandum and record of appeal was not inordinate and every effort has since been made to act with diligence and expeditiously upon receiving the necessary instructions to proceed.

3) **Mr. Ombasa** further deponed that the subject matter of this case involves public funds and it is therefore in the interest of the public that the Court considers the same with due regard to its broader implications. Further, that as advised by the advocates on record, the respondent will not suffer any prejudice if the orders sought are granted.

4) The respondent did not file a reply or written submissions despite service of the hearing notice.

Determination

5) I have considered the motion, the grounds thereof, the supporting

affidavit and the law. The principles upon which this Court exercises its discretion

under **Rule 4** of this **Court's Rules** are firmly settled. The Court has wide and unfettered discretion in deciding whether to extend time or decline the same. However, in exercising its discretion, the court should do so judiciously.

6) See **Fakir Mohamed v Joseph Mugambi & 2 others [2005] eKLR** where

the Court laid out some of the considerations to be taken into account in deciding applications of this nature as follows; the length of the delay, the causes of the delay, the possibility of the appeal succeeding and prejudice to be occasioned to the parties.

7) **Rule 4** of the **Court of Appeal Rules** does not provide for factors the court ought to consider in an application for extension of time but courts have devised appropriate principles to be applied in achieving an objective decision in the circumstances of each case. The case of

Leo Sila Mutiso v

Hellen Wangari Mwangi [1999] 2 EA 231 which is the *locus classicus*,

laid down the parameters as follows:

"It is now well 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. [Emphasis supplied].

8) From the record, the impugned judgment was delivered on 27th February 2025. The notice of appeal was lodged on 11th March 2025. The time for filing the record of appeal therefore lapsed on 9th May 2025.

9) **Rule 84(1)** of this **Court's Rules** provides as follows:

84. (1) Subject to rule 118, an appeal shall be instituted by lodging in the appropriate registry, within sixty days after the date when the notice of appeal was lodged—

(a) a memorandum of appeal, in four copies;

(b) the record of appeal, in four copies;

(c) the prescribed fee; and

(d) security for the costs of the appeal:

Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with sub-rule (2) within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.

10) The memorandum and record of appeal ought to have been filed within 60 days from the date when the notice of appeal was lodged (9th May 2025). The instant application was lodged on 22nd July 2025, a delay of about seventy-three (73) days.

11) The applicant contends that it has an arguable appeal on the ground *inter alia* that the High Court erred in striking out the applicant's suit without granting it the opportunity to fully ventilate the issues through a

substantive hearing. Without going into the merits of the appeal as this will be determined by the full bench which will be seized of the main appeal, I am satisfied that the appeal is arguable.

12) In Muchugi Kiragu v James Muchugi Kiragu & another Civil

Application No. NAI. 356 of 1996, this Court had the following to say as

regards this Court's discretion under **Rule 4**:

“Lastly, we would like to observe that the discretion granted under rule 4 of the Rules of this Court to extend the time for lodging an appeal is, as is well known, unfettered and is only subject to it being granted on terms as the Court may think just. Within this context, this Court has on several occasions, granted extension of time, on the basis that an intended appeal is an arguable one and that it would therefore, be wrong to shut an applicant out of Court and deny him the right of appeal unless it can fairly be said that his action was in the circumstances, inexcusable and that his opponent was prejudiced by it.” (Emphasis supplied).

13) On the degree of prejudice to the respondent, I am called upon to balance the competing interests of the parties, that is, the injustice to the applicant in denying it an extension, against the prejudice to the respondent in granting an extension. The applicant is aggrieved by the ruling of the High Court and is desirous of appealing against the said ruling out of time.

14) In the case of Richard Nchapi Leiyagu vs IEBC & 2 Others, Civil

Appeal No. 18 of 2013, this Court expressed itself as follows:

“The right to a hearing has always been a well-protected right in our Constitution and is also the cornerstone of the rule of law. This is why even if the courts have inherent jurisdiction to dismiss suits, this should be done in circumstances that protect the integrity of the court process from abuse that would amount to injustice and at the end of the day there should be proportionality.”

15) From the circumstances of the application before me, the applicant has demonstrated the existence of the parameters set out in **Leo Sila Mutiso** (supra). The upshot is that the notice of motion dated 22nd July 2025 is allowed as prayed.

16) It is so ordered.

Dated and delivered at Nairobi this 30th day of January, 2026

JAMILA MOHAMMED

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR