



**Oceanview Plaza Limited v C.B. Gor & Gor (Civil Application
E077 of 2025) [2026] KECA 41 (KLR) (30 January 2026) (Ruling)**

Neutral citation: [2026] KECA 41 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPLICATION E077 OF 2025
GW NGENYE-MACHARIA, JA
JANUARY 30, 2026**

BETWEEN

OCEANVIEW PLAZA LIMITED APPLICANT

AND

C.B. GOR & GOR RESPONDENT

*(Being an application for extension of time to file an appeal out of time in respect
to the decision of the High Court of Kenya at Mombasa (Magare, J.) dated
11th July 2024 in High Court Miscellaneous Civil Application No. 75 of 2020)*

RULING

1. By a Notice of Motion dated 19th August 2025 brought under Article 159(2) of *the Constitution*, Rules 4, 41 and 49 of the Court of Appeal Rules, 2022 and Sections 3, 3A and 63 (e) of the *Civil Procedure Act*, the applicant, Oceanview Plaza Limited seeks:
 - a. Spent;
 - b. That pending the hearing inter parties, this Court be pleased to grant leave to file and serve a Notice of Appeal and Record of Appeal out of time against the Ruling delivered on 19th October 2023 in Mombasa High Court Miscellaneous Civil Application No. 75 of 2020;
 - c. That this Court be pleased to deem the Notice of Appeal dated 26th July 2024 as duly filed and properly on record;
 - d. That this Court be pleased to deem the amended Memorandum of Appeal in Civil Appeal No. E098 of 2024 as duly filed upon payment of the requisite filing fees; and
 - e. That costs of, and incidental to, this application do abide the outcome of the intended appeal.



2. The application is premised on the grounds on its face and the supporting affidavit deposed to by Naresh Manilal Kotak, the applicant's Director on 27th July 2025. He stated that the applicant intends to appeal against the decision of the superior court delivered on 11th July 2024 in Mombasa HC Misc. Civil Application No. 75 of 2020; that the delay in filing the Notice and Memorandum of Appeal arose from the need to confirm the status of the security deposit of Kshs.5,000,000 made in the trial court on 22nd January 2021, which materially affected the foundation of the intended appeal; that, in the intervening period, it filed in this Court, an application seeking stay of execution, being Civil Appeal No. E098 of 2024 which was heard and determined on 28th April 2025; that this Court directed that the appeal be heard on its merits; that it had earlier filed out of time a Notice of Appeal dated 26th July 2024; that, in their Supplementary Affidavit dated 25th April 2025, it annexed a Draft Memorandum of Appeal dated 11th August 2024; that the present application has been filed without undue delay; and that the respondent will not suffer any prejudice if the application is allowed.
3. In a brief response, the respondent filed a replying affidavit sworn by one Shishir Suryakant Gor, counsel in conduct of the matter on behalf of the respondent on 29th August 2025. He deposed that the ruling sought to be appealed against was delivered on 11th July 2024, yet the instant application has been filed more than a year later which delay is inordinate, unexplained and prejudicial to the respondent; and that the excuse advanced by the applicant of first having to await confirmation of the status of the security of Kshs.5,000,000 deposited in the trial court, is untenable since nothing prevented the applicant from filing the Notice of Appeal within the statutory period of 14 days.
4. It was further deposed that the applicant not only filed the Notice of Appeal a day out of time, but also the Memorandum and Record of Appeal, a demonstration of indolence since the applicant was represented by counsel and, therefore, fully aware of the applicable timelines; that the intended appeal does not raise any weighty issues, but is an attempt to frustrate the respondent from enjoying the fruits of its taxed costs amounting to Kshs.1,028,466 awarded on 19th October 2023; and that the said amount was remitted to the respondent through RTGS as per the court order dated 28th November 2023.
5. The respondent contended that the applicant's conduct shows a lack of seriousness, indolence and, as a consequence, it ought to be dismissed with costs.
6. In its supplementary affidavit dated 8th September 2025, the applicant denied that a sum of Kshs.1,028,456 was remitted to the respondent by way of an RTGS; and that the correct position is that the sum of security for costs of Kshs.5,000,000 has not been transferred and/or remitted to the respondent.
7. The application came up for hearing on 19th November 2025. None of the parties appeared in Court. That said, under the proviso to Rule 58(1) of this Court's Rules, 2022, the Court can determine an application on the basis of written submissions only even if the parties do not appear in Court. It is the basis on which I determine this application.
8. In its submissions dated 12th September 2025, the applicant cited the Supreme Court decision of Andrew submitting on the need Kiplagat Chemaringo vs. Paul Kipkorir Kibet (2018) KECA 701 (KLR) which outlined the principles to be considered when determining an application for extension of time; Sections 3A and 3B of the *Appellate Jurisdiction Act*, Cap 9; and this Court's decision in MSA vs. KMKA (2024) KECA 1222 (KLR) in emphasizing the need of the Court to exercise its discretion in allowing the application for the sake of serving substantive justice.



9. On its part, the respondent relied on written submissions dated 10th September 2025. The decision of *Leo Sila Mutiso vs. Rose Hellen Wangari Civil Application No. Nai 255 of 1997* as quoted in the case of *Raphael Musila Mutiso & 3 others vs. Joseph Ndava Nthuka & Another (2019) KECA 463 (KLR)* was referred to where factors for considering in extension of time were considered. It was submitted that, in this instance, the applicant had not met the threshold for grant of the reliefs sought; that the length of delay was of more than one year and this was inordinate, thus disqualifying the applicant from equitable relief; and that the fact of having to await confirmation of a security deposit is untenable as nothing prevented timely filing of the Notice of Appeal within 14 days.
10. On the arguability of the appeal, it was submitted that the intended appeal merely challenges taxation of costs which costs were already upheld by the High Court; that the respondent would be prejudiced as it would be prevented from enjoying the fruits of its taxed costs; and that the application should be dismissed as litigation must come to an end as was held by the Supreme Court in *Kibisu vs. Republic (2018) KESC 34 (KLR)*.
11. I have accordingly considered the application, the affidavits in support of, and in opposition to, the application, the respective written submissions and the law. The only issue that falls for determination is whether the applicant has satisfied this Court that it is entitled to extension and/or enlargement of time for filing the Notice and Record of Appeal out of time.
12. Rule 4 of the Court of Appeal Rules, 2022 confers upon this Court the jurisdiction to extend time as follows:

“The Court may, on such terms as may be just, by order, extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”
13. Inasmuch as this Court’s discretion is wide and unfettered in granting extension of time, the discretion must be exercised judiciously, but not whimsically to the detriment of the other parties. The guiding principles to consider in an application for extension of time are well settled. The Court should first consider the length of the delay; the applicant should at the very least explain the reasons for the delay; the need to balance the interests of a party who has a decision in his or her favour; and lastly, the degree of prejudice which the respondent would suffer if the application was to be granted.
14. These principles were restated in the case of *Muringa Company Limited vs. Archdiocese of Nairobi Registered Trustees (2020) KECA 761 (KLR)* as follows:

“Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.”



15. These principles were restated in the case of Leo Sila Mutiso (*supra*), and further in the decision of Paul Wanjohi

Mathenge vs. Duncan Gichane Mathenge (2013) KECA 199 (KLR) where Otieno – Odek, JA. held:

“The discretion under Rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter

raises issues of public importance...”

16. The Supreme Court in the case of Nicholas Kiptoo arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 others (2014) eKLR stated that:

“ Extension of time being a creature of equity, one can only enjoy it if he acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it.”

17. The Court went on to lay down the factors that a court should consider in extending time to file an appeal as follows:

- i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
- ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
- iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
- v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
- vi. Whether the application has been brought without undue delay; and
- vii. Whether in certain cases like election petition public interest should be a consideration for extending time.”

18. The applicant is aggrieved by the decision in Mombasa High Court Miscellaneous Civil Application No. 75 of 2020 dated and delivered on 11th July 2024. The applicant contends that the delay was occasioned by its desire to confirm the status of the security deposited in the trial court. In my view, this is not a proper excuse for delay in filing a Notice of Appeal. There is no law, principle or rule which commends that a party should first confirm the status of security deposited in court before commencing appeal proceedings in this Court.



19. All that the appellant was required to do was to file a notice of appeal as provided for under Rule 77(2) of the Court of Appeal Rules, 2022. Furthermore, it approached this Court after a period of close to a year (11 months) since the delivery of the impugned Ruling on 11th July 2024. This is a testament that it had no interest at all in appealing the said ruling and, therefore, the filing of this application is merely intended to clog the wheels of justice. This must be discouraged at all costs as Sections 3, 3A and 3B of the *Appellate Jurisdiction Act* obligates the Court to ensure expeditious and just adjudication of justice. The applicant's inaction for all this period negates the clarion call to adjudicate disputes in a timely and just manner.
20. It is in view of the above that I come to the inescapable conclusion that the delay in filing the Notice and Memorandum of Appeal is inordinate and inexcusable, and that the reasons advanced thereof are not plausible in the circumstances. I emphasise that the indolence and inaction of the applicant militate against grant of the orders sought in the application.
21. In the end, the Notice of Motion dated 19th August 2025 is hereby dismissed with costs to the respondent.

DATED AND DELIVERED AT MOMBASA THIS 30TH DAY OF JANUARY, 2026.

G. W. NGENYE-MACHARIA

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JUDGE OF APPEAL

