

**IN THE COURT OF
APPEAL AT NAIROBI**

(CORAM: TUIYOTT, JA (IN

CHAMBERS) CIVIL APPLICATION NO.

E440 OF 2025 BETWEEN

SOUTHERN SHIELD HOLDINGS LIMITED.....APPLICANT

AND

**TITUS MAKHANU ASSOCIATES ADVOCATES.... 1ST
RESPONDENT ALICATE HOLDINGS LIMITED. 2ND
RESPONDENT**

(Being an application for extension of time to file and serve a Record of Appeal out of time from the Ruling of the High Court of Kenya at Nairobi (F. Mugambi, J.) dated 27th September, 2024

in

HCCOMMMISC NO. E145 OF 2021)

RULING

[1] Southern Shield Holdings Limited, the applicant herein, being dissatisfied with the decision of **F. Mugambi J.** dated 27th September, 2024 in **HCCOMMMISC No. E145 of 2021**, lodged a notice of appeal dated 2nd October, 2024 at the High Court, Commercial and Tax Division registry evincing a desire to challenge the decision. On the same day, it

requested for typed

proceedings vide a letter dated 1st October, 2024.

[2] The applicant was late in instituting its appeal and now brings this motion dated 18th July, 2025 seeking leave to file and serve a record of appeal out of time. Reasons for the delay given in the affidavit of **Abdulali Kurji** a director of the applicant, sworn on even date, are that although a letter bespeaking typed proceedings was lodged on 1st October 2024, the proceedings were not supplied until 6th February 2025 and a certified copy of the order was only provided on 12th May 2025. Furthermore, despite consistent follow-ups, the Certificate of Delay was only signed by the Deputy Registrar on 10th July 2025. It is asserted that these documents were crucial in completing the record of appeal. The applicant contends that the application is brought in the best interest of justice and fairness, arguing that the respondents will not suffer prejudice or inconvenience if the orders are granted.

[3] The 1st respondent filed a replying affidavit of **Titus Makhanu**, an advocate practising as Messrs. Titus Makhanu & Associates Advocates, sworn on 3rd November, 2025 opposing the application. On matters germane to the nature

of the application before Court, he contends that the applicant has

failed to satisfy the requirements of Rule 4 of the Court of Appeal Rules, which necessitates showing that an intended appeal is arguable in so far as the appeal is not bona fide because it is anchored on the false premise of being denied a hearing, whereas the record shows the applicant's extensive involvement in the High Court proceedings. He argues that the application and the intended appeal have been overtaken by events as the applicant already complied with the High Court order dated 27th September 2024 by paying the decretal sum. This payment followed negotiations and resulted in the applicant withdrawing its applications for a stay of execution both before the High Court and the Court of Appeal by consent.

- [4] The 2nd respondent did not file any response to this application.
- [5] The parties filed their submissions, substantially a regurgitation of their positions taken in their respective affidavits.
- [6] This Court is granted discretion under rule 4 of the Rules of Court exercisable within the well settled considerations restated in **Fakir Mohamed v Joseph Mugambi & 2**

others [2005] KECA 340 (KLR) to be, *inter alia*: -

“The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance- are all relevant but not exhaustive factors...”

[7] Rule 84 on institution of civil appeals reads: -

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

(a) a memorandum of appeal, in quadruplicate;

(b) the record of appeal, in quadruplicate;

(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 of 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 times 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.

(2) An appellant shall not be entitled to rely on the proviso to sub-rule (1) unless his

application

for such copy was in writing and a copy of it was served upon the respondent.

(3) The period limited by sub-rule (1) for the institution of appeals shall apply to appeals from superior courts in the exercise of their bankruptcy jurisdiction.”

[8] The applicant duly filed a notice of appeal on 2nd October, 2024 and on the same day sought typed proceedings vide the letter dated 1st October, 2024, all done within the prescribed timelines for filing. Since the applicant served the respondents with the letter bespeaking for proceedings, they benefit from the suspensory proviso to sub-rule 1 of rule 84. The proceedings were not ready for collection until 6th February, 2025 and a certified copy of the order was issued on 12th May, 2025. In addition, the certificate of delay was not signed until 10th July, 2025. These are all common ground.

[9] The Certificate of Delay excluded the period between 2nd October, 2024 to 6th February, 2025, a period of 127 days, which it took the registry to prepare and supply the certified copies. It was however issued on 10th July, 2025 causing further delay in the process of filing. There is evidence of the

applicant's advocates making follow ups with the registry of
the trial court

via letters dated 9th April, 2025 and 29th May, 2025 in which they request for a certified copy of the order and similarly requested that the Certificate of Delay be signed. This is not the conduct of an indolent litigant. In addition, the two documents would be necessary to complete the record of appeal (see rule 89(1)(g)(h)(k)). The diligence of the applicant is further demonstrated when it brought the current application on 18th July, 2025, just eight (8) days after obtaining the last crucial document.

[10] The contention by the 1st respondent that the applicant has already complied with the High Court order dated 27th September, 2024 by paying the decretal sum rendering the intended appeal otiose is matter for the Court hearing the intended appeal to decide and has no bearing on the application this Court is currently asked to resolve. Finally in reaching a decision that the plea for extension is deserving, it has not been demonstrated, nay alleged, that the respondents will suffer prejudice should the application be allowed.

[11] Ultimately the application dated 18th July, 2025 is for

allowing, as I do. The applicant shall within forty-five (45) days of this

Ruling file and serve the record of appeal. Costs of this application shall be in the intended appeal.

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

F. TUIYOTT

.....
JUDGE OF APPEAL

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

Signed

DEPUTY

REGISTRAR.

