

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
COMMERCIAL & ADMIRALTY DIVISION
MISCELANEOUS APPLICATION NO.E034 OF 2025

PREMIER BANK LIMITED.....INTENDED APPELLANT
-VERSUS-
NAGIB ABDALLA KHAMIS.....RESPONDENT

RULING

1. This is a ruling on the applicant’s motion dated 27 February 2025 in which the applicant seeks for leave to file an appeal out of time. The application is expressed to be filed under sections 1A, 1B and 3A of the Civil Procedure Act, cap. 21 and Order 50 rule 6 and order 51 of the Civil Procedure Rules. It is supported by the affidavit of Brian Mbabu, Esq. who has sworn that he is an advocate of this Honourable Court on record for the applicant.
2. The appeal which the applicant seeks to file arises out of case file in the Chief Magistrates’ Court at Mombasa as No. 442 of 2019. In that suit, the applicant was sued for damages and a liquidated claim. The applicant not only opposed the suit, but by way of a counter-claim, it also filed a claim of its own against the respondent. Both the suit and the counter-claim were dismissed and parties ordered to bear their respective costs.
3. According to Mr. Mbabu, on 25 April 2023 he attended court when the case was scheduled for delivery of the judgment. The judgment was not delivered as scheduled but on the same date, a notice by the court dated

24 April 2023 was issued notifying, litigants, their advocates and members of the public in general that the judgments and rulings scheduled for that particular date would be delivered on notice.

4. However, the applicant never received any notice on when the judgment would be delivered. It is only on 26 February 2025, that the applicant traced the file and established that the judgment was delivered on 30 June 2023, in the absence of all the parties.
5. The applicant is dissatisfied with the judgment but it cannot appeal without leave of this Honourable Court for the obvious reason that the limitation period for the filing of the appeal has long lapsed. It is for this reason that the applicant has filed the application.
6. The respondent did not file any response to the application and, therefore, the application is as good as unopposed.
7. There is evidence that indeed the judgments due for delivery between 25 April 2023 and 28 April 2023 were deferred, to be delivered on notice. But as the applicant has stated, there is no evidence that the notice was ever issued or that the parties were informed of the when the judgment would be delivered in any other manner.
8. The applicant took steps to file this application immediately its advocates learnt of the judgment. In these circumstances, it is in the interest of justice that the applicant be granted leave to file the appeal out of time. Accordingly, the applicant's application is granted; the applicant shall file

and serve the appeal within 30 days from the date of this ruling. It is so ordered.

Signed, dated and circulated on the CTS on 20 February 2026

Ngaah Jairus
JUDGE