

**IN THE COURT OF APPEAL  
AT NAIROBI**

**(CORAM: ONGAYA, JA. (IN CHAMBERS))**

**CIVIL APPLICATION NO. NAI E668 OF**

**2025 BETWEEN**

**KENMOT SPARES LIMITED.....APPLICANT**

**AND**

**BARCLAYS BANK OF KENYA LIMITED.....RESPONDENT**

*(Being an application for leave to file a Notice of Appeal out of time against the Ruling and Order of the High Court of Kenya at Nairobi, Milimani Commercial & Tax Division (Njoki Mwangi, J.) delivered on 3<sup>rd</sup> October, 2025*

*in*

**HCCOMM No. E339 of  
2024)**

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**R U L I N G**

- 1.** The applicant filed the notice of motion dated 14<sup>th</sup> November 2025. It was under **Rule 4** of the Court of Appeal Rules, **Section 3A & 3B** of the Appellate Jurisdiction Act, **Articles 48, 50** and **159(2)(d)** of the Constitution and all enabling provisions of law. The applicant is seeking orders as follows:

*(1) Pending the hearing and determination of this application, this Honourable Court be pleased to issue an order of temporary injunction*

*restraining the respondent from selling, auctioning, transferring, disposing of or in any way*

*whatsoever interfering with the applicant's property known as LR. No. 209/136/182 (Kirinyaga Road, Nairobi).*

- (2) This Honourable Court be pleased to grant leave to the applicant to file and serve a Notice of Appeal against the Ruling and Order of the High Court of Kenya at Nairobi (Milimani Commercial and Tax Division) delivered on 3<sup>rd</sup> October 2025 in HCCOMM/E339/2024 – Kenmot Spares Limited v Barclays Bank of Kenya Limited out of time.*
- (3) Upon grant of leave, the draft Notice of Appeal annexed hereto be deemed as duly filed and served upon payment of requisite fees.*
- (4) The costs of this application be borne by the respondent.*

2. The application is premised on grounds set out in the notice of motion and the supporting affidavit of Stanley Njenga Muigai, sworn on 14<sup>th</sup> November 2025. It is stated for the applicant as follows:

- (1) The applicant passed a company resolution authorizing the filing of an appeal against the Ruling delivered in the said HCCOMM/E339/2024.*
- (2) The applicant is a private limited liability company engaged in the importation and sale of industrial spare parts, operating from its business premises situated on LR. No. 209/136/182 along Kirinyaga Road, Nairobi.*
- (3) By a facility letter dated 11.04.2016, the respondent advanced to the applicant a term loan facility of Kshs. 160,500,000.00, repayable over a period of 120 months at an interest rate of 17% per*

*annum, and a default rate of 24% per annum. As security for the facility, the applicant's directors executed a legal charge over the property known as LR. No. 209/136/182, Kirinyaga Road, Nairobi in favour of the respondent. The applicant then commenced and continued repayment of the facility as agreed.*

*(4) Appreciating prevailing economic hardships in 2018, 2019 and 2020, the respondent agreed to restructure the facility by reducing monthly instalments to Kshs. 600,000.00, which the applicant voluntarily increased to Kshs. 820,000.00.*

*(5) In late 2023, the applicant informed the respondent of its intention to make a lump-sum repayment of Kshs. 20 million by April 2024 from the proceeds of a director's property sale. However, the sale collapsed after the said property suffered flooding, which the applicant notified the respondent and continued making its regular monthly repayments.*

*(6) Despite the applicant's demonstrated good faith and consistent performance, the respondent issued a formal demand dated 12.02.2024 claiming that the outstanding loan stood at Kshs. 238,258,405.65 as at 29.02.2024, and thereafter, instructed auctioneers to issue a 45-day Redemption Notice dated 15.05.2024.*

*(7) The threatened realization of the charged property was premature, inequitable and irregular, given the unresolved dispute on loan computations, undervaluation of the property and the applicant's continued repayment record. Further, the respondent refused to provide the applicant with copies of the charge instrument and facility letter despite several written*

*requests.*

- (8) Following the issuance of the redemption notice, the applicant filed the said HCCOMM/E339/2024, seeking inter alia, an injunctive relief to restrain the respondent from proceeding with the intended auction pending the determination of the suit. However, on 03.10.2025, Njoki Mwangi, J. delivered a ruling dismissing the injunction application, holding that disputes relating to loan balances and valuation could not, in themselves, justify the grant of injunctive relief. The respondent consequently regained liberty to proceed with the sale of the charged property.
- (9) Unfortunately, the applicant's then advocates failed to inform the applicant of the delivery of the said Ruling, and no notice of appeal was filed within the statutory 14 days provided under Rule 77(2) of the Court of Appeal Rules, 2022. The applicant only became aware of the Ruling on or about 07.11.2025, upon personally inquiring and was never apprised of the same, which led to delay in issuing instructions.
- (10) Upon discovering the omission, the applicant immediately instructed new advocates, who promptly prepared and filed the present application. As such, the delay of approximately 25 days occasioned herein is fully excusable, and unless the Court extends the time for filing the notice of appeal, the applicant will be deprived of its right to appeal.
- (11) The applicant has an arguable appeal as it has consistently repaid monthly instalments of Kshs. 820,000.00. On the other hand, the respondent will not suffer any prejudice if the instant application is allowed as prayed and as the applicant continues to pay its monthly instalments to settle the loan

*obligations.*

3. The application was listed on 26.02.2026 as a chamber matter before me and considered in the absence of both parties. The parties by the hearing notice dated 12.02.2026 were reminded about the directions as to service and filing of submissions by 26.02.2026.
4. The applicant filed submissions dated 10<sup>th</sup> February 2026. Despite service of the application upon the respondent per the affidavit of service of Kyalo Kamina sworn on 24.02.2026, and the hearing notice dated 12.02.2026, the respondent did not file a replying affidavit and submissions.
5. The applicant's case is that the delay of 27 days in filing the notice of appeal was due to the former advocate's failure to promptly communicate the delivery of the ruling subject of the proposed appeal. The applicant's assertion has not been rebutted at all. There is no material on record to suggest that the applicant failed to follow up with the former advocates or was not diligent at all material times as relates to prosecution of the suit in the superior court. In the circumstances, I consider that the mistake of the former advocate should not be visited upon the innocent applicant, and, as was urged

for the

applicant. It appears to have been an honest mistake for the former advocate to fail to promptly communicate to the applicant the fact of the ruling having been delivered.

6. I have considered the length of the delay being 27 days, the sufficient reason given as a mistake attributable to the former applicant's advocate, the instant application having been filed without inordinate delay, and, that the applicant should not be prevented from exercising the right to appeal unless upon a good reason shown. The application for leave will therefore be allowed and the notice of appeal deemed duly filed and served. Thus, in **Philip Keipto Chemwolo & Another vs Augustine Kubende [1986] KECA 87 (KLR)** (Platt, Gachuhi & Apallo JJA), as per Apaloo JA, the Court held, I think a distinguished equity judge has said:

*"Blunders will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case determined on its merits."*

*I think the broad equity approach to this matter is that unless there is fraud or intention to overreach, there is no error or default that cannot be put right by payment of costs. The court, as is often said, exists for the purpose of deciding the rights of the parties and not for the purpose of imposing discipline...."*

7. It should be obvious that by reason of this ruling, prayer one of the instant application is moribund. In conclusion, the application by the notice of motion dated 14.11.2025 is hereby determined with orders as follows:

- 1) Leave is hereby granted to the applicant to file and serve a Notice of Appeal.**
- 2) The draft Notice of Appeal as annexed is hereby deemed as duly filed and served upon payment of requisite fees.**
- 3) The costs of the application to abide in the intended appeal.**

**Dated and delivered at Nairobi this 6<sup>th</sup> day of March, 2026.**

**B. ONGAYA**

.....  
**JUDGE OF APPEAL**

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

**Signed**

**DEPUTY REGISTRAR**