



Excellent Logistics Limited & 4 others v Kenya Commercial Bank Limited (Civil Application E673 of 2025) [2026] KECA 486 (KLR) (6 March 2026) (Ruling)

Neutral citation: [2026] KECA 486 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E673 OF 2025**

JO OKELLO, JA

MARCH 6, 2026

BETWEEN

**IMG MEDIA/IMAGE-1,JEXCELLENT LOGISTICS LIMITED & 2
OTHERS.....1ST APPLICANT FREDRICK NGUGI NDUNGU .. 1ST APPLICANT
FREDRICK NGUGI NDUNGU 2ND APPLICANT
JOSEPHINE WATETU NDUNGU & 2 OTHERS & 2 OTHERS & 2
OTHERS 3RD APPLICANT**

AND

KENYA COMMERCIAL BANK LIMITED RESPONDENT

(An application for leave to file the Record of Appeal out of time against the Ruling of the High Court of Kenya at Nairobi (J.W. W. Mongare, J.) delivered on 13th June, 2025 in HCCOMM/E070 of 2024)

RULING

1. By a Notice of Motion dated 15th November, 2025, the applicant, under certificate of urgency, has applied for extension of time to file the Record of Appeal out of time against the ruling delivered on 13th November, 2025 in Commercial Suit No. HCCOMM/070 of 2024 at Milimani High Court, Nairobi.
2. The firm of Osoro Omwoyo & Co. Advocates is on record for the Applicants while Waweru Gatonye & Company Advocates are on record for the Respondents. The Notice of Hearing was duly served.
3. The applicant’s case is premised on the grounds stated on the face of the application and the supporting affidavit of urgency by counsel acting for the applicants and the supporting affidavit of the 2nd applicant herein. The applicants seek for extension of time be granted on grounds that:-



- a. the delay in filing the Record of Appeal to the proceedings is attributed to the proceedings which were issued by the Honourable Deputy Registrar on 13th November, 2025;
 - b. that the proceedings were not typed in time and hence there was a delay in obtaining the same;
 - c. that the intended appeal is arguable and meritorious with high chances of success;
 - d. that the application has been brought without inordinate delay owing to the fact that the proceedings were obtained on 13th November, 2025;
 - e. that the applicant has rights of appeal as enshrined in *the Constitution* and hence the period ought to be extended so that the Applicants file an appeal out of time;
 - f. that the Respondents will not suffer any prejudice if the application and the extension of time is granted;
 - g. that the applicant is aggrieved by the entire ruling dated 13th June, 2025; and
 - h. that it is in the interest of justice that the application be allowed.
4. Rule 4 of the Court of Appeal Rules provides:
- “The Court may, on such terms as it thinks 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.”
5. The principles that guide this Court in determining whether to extend time pursuant to Rule 4 of the Rules of this Court are now well settle. The principles are well set out in *Mwangi vs Kenya Airways (2003) KLR 486* at page 489 as follows:
- “Over the years, the Court has set out guidelines on what a single judge should consider when dealing with an application for extension of time under rule 4 of the rules. For instance, in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi*, (Civil Application No. Nai. 255 of 1997, the Court expressed itself thus: It is now well settled that the decision whether to extend the time 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 appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”
6. Rule 4 of this Court’s rules gives a single judge an unfettered discretion and so long as the discretion is exercised judicially, a Judge would be entitled to consider any other factor outside those listed so long as the factor is relevant to the issue since the principles enunciated before are not exhaustive.
7. Extension of time is an equitable remedy and not a right. It is therefore discretionary in nature. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR* summed up the applicable considerations as follows:
- (a) extension of time is not right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;



- b. a party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court;
 - c. whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to- case basis;
 - d. whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 - e. whether there will be any prejudice suffered by the respondents if the extension is granted;
 - f. whether the application has been brought without undue delay; and
 - g. whether in certain cases, like election petitions, public interest should be a consideration for extending time.
8. The principles enunciated are the principles I proceed to apply in the instant case in determining whether the prayers sought by the applicants in their Notice of Motion dated 15th November, 2025 should be granted. The applicants’ prayers are that the Honourable Court extend time and grant leave to allow the applicants file the Record of Appeal out of time against the Ruling dated 13th June, 2025 in Commercial Suit No. HCCOMM/E070 of 2024, and that the Record of Appeal attached thereto be deemed as duly filed upon payment of the requisite fees. The applicants further pray for the costs of the application.
 9. From the grounds of the application and the supporting affidavit for urgency, the applicants counsel attributes the delay in filing the Record of Appeal to the proceedings which were issued by the Honourable Deputy Registrar on 13th November, 2025. In the supportive affidavit, the 2nd applicant, Fredrick Ngugi Ndungu, reiterated the grounds on the face of the application and further deposed that the intended appeal is arguable and meritorious with high chances of success. He deposed that the Respondents will not suffer any prejudice if the application and the extension sought is granted. Mr. Ngugi further deposed that it is in the interest of justice that the application be allowed.
 10. The first issue of consideration is the length of and reason for the delay. It is important to note that the impugned ruling was delivered on 13th June, 2025. From the records, it is clear that the applicant being aggrieved with the ruling, filed a Notice of Appeal, marked as exhibit No. “FNN2” dated 26th June, 2025, well within the time required for filing a notice of appeal. Further, a copy of the proceedings was received on 13th November, 2025 and the applicant filed the application on 15th November, 2025. I find the reasons given for filing the record of appeal out of time as credible. The applicant has further annexed the memorandum of appeal to which the applicant prays that it be deemed as filed.
 11. The other criterion is the issue of the chances of the appeal succeeding. The application and supporting affidavit provide that the appeal has high chances of success as the High Court made errors in the Ruling dated 13th June, 2025. Further the draft memorandum of appeal provides for several grounds for being dissatisfied with the ruling.
 12. As to the degree of prejudice, the applicant deposed that the Respondents will not suffer any prejudice. I have not had the benefit of hearing from the Respondents and will therefore leave it at that.
 13. I have considered the application, the grounds in support of the application, the supporting affidavits, the applicants’ submission and the authorities cited and the law. The jurisdiction of this Court under Rule 4 of this Court’s Rules is discretionary and guided by the interest of justice.



14. On the first principle, as to the length of the delay and reasons for the delay, I find that the applicants have acquitted themselves by providing plausible reasons for the delay. The delay in my view is not inordinate bearing in mind that the notice of appeal was filed within the stipulated timelines and further that immediately the applicants received the certified copy of proceedings on 13th November, 2025, they proceeded to file this application on 15th November, 2025. There was therefore no inordinate delay.
15. On the second principle as to whether there are chances of success, I have to consider whether there is a single arguable ground that has been raised by the applicant. Having carefully considered the grounds set out in the motion and the draft memorandum of appeal, in my view, the appeal is arguable. An arguable point is not necessarily one that must succeed, but merely one that is deserving of consideration by the Court.
16. I am persuaded that the applicant deserves the favourable exercise of this Court's discretion. I allow the application dated 15th November, 2025. Consequently, I make the following orders:
 - a. The Notice of Motion dated 15th November, 2025 is allowed.
 - b. The applicant is given seven days to formally file the memorandum and record of appeal and serve it accordingly, and in default the leave granted herein shall lapse.
 - c. There are no orders as costs.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF MARCH, 2026.

(DR.) J. O. OKELLO

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

