

**IN THE COURT OF
APPEAL AT
NAIROBI**

**CORAM: JAMILA MOHAMMED, J.A. (IN
CHAMBERS)) CIVIL APPLICATION NO. E360 OF
2025**

BETWEEN

KENYA COMMERCIAL BANK.....APPLICANT

AND

GRACE MWELU KITISE.....RESPONDENT

(Application for extension of time to file the Record of Appeal out of time from the judgment of the High Court of Kenya at Nairobi (C. Meoli, J.) dated 31st January 2024

in

HCCC No. E826 of 2021)

RULING

Introduction

1) By a notice of motion dated 10th June 2025 and expressed to be brought under **Rule 4** of the **Court of Appeal Rules, 2022, Kenya Commercial Bank** (the applicant) seeks extension of time within which to file and serve the Memorandum and Record of Appeal against the judgment of the High Court at Nairobi (C. Meoli, J.) delivered on 31st January 2024.

Grace Mwelu Kitise is the respondent herein.

- 2) The application is supported by an affidavit sworn on 11th September 2025 by learned counsel **Carren J. Kimorna**, from the firm of **Kale Maina & Bundotich Advocates LLP** who are on record for the applicant.
- 3) The respondent opposes the application and urges the Court to decline the invitation to exercise its discretion under Rule 4.
- 4) The relevant background is not contested. Judgment of the High Court was delivered on 31st January 2024 in favour of the respondent. The applicant signified its intention to challenge that decision by filing a Notice of Appeal dated 5th February 2024.
- 5) The applicant requested certified copies of the proceedings by a letter dated 31st January 2024. A Certificate of Delay dated 17th February 2025 confirms that 104 days were required by the court to prepare the typed proceedings. Notwithstanding the issuance of the certificate of delay, the applicant did not lodge the Record of Appeal within the sixty (60) days prescribed by the Rules. Instead, the present application seeking extension of time was filed on 11th September 2025.
- 6) The jurisdiction of a single Judge of this Court to extend time is derived from Rule 4 of the Court of Appeal Rules, 2022. Although the discretion conferred by Rule 4 is wide, it must be exercised judicially and on the basis of settled principles.
- 7) In ***Leo Sila Mutiso v Hellen Wangari Mwangi [1999] 2 EA 231***, the

Court held that the factors to be considered include the length of delay,

the reason for the delay, the chances of the intended appeal succeeding and the degree of prejudice to the respondent.

8) These principles were reiterated in **Fakir Mohamed v Joseph Mugambi**

& 2 Others [2005] eKLR where the Court emphasized that the applicant

must place before the Court sufficient material upon which the discretion may properly be exercised.

9) The Supreme Court in **Nicholas Kiptoo Arap Korir Salat v Independent**

Electoral and Boundaries Commission & 7 Others [2014] eKLR

further affirmed that extension of time is an equitable remedy available only to a deserving party who demonstrates diligence.

10) On the length of the delay, the judgment sought to be appealed from was delivered on 31st January 2024. The Certificate of Delay was issued on 17th February 2025. The present application was filed on 11th September 2025. The delay after the issuance of the certificate of delay is therefore approximately seven (7) months.

11) In applications of this nature, an applicant must account for the entire period of delay. Failure to explain any substantial portion of delay may disentitle the applicant from the Court's discretion.

12) The explanation offered by the applicant is that the advocate previously handling the matter left the firm and the file was not properly handed over.

**13) In Philip Chemwolo & Another v Augustine Kubende [1982-88]
KAR**

103 the Court emphasized that blunders will occur in litigation.
However,

the Court has also made it clear that the explanation must still be credible and must account for the entire period of delay.

14) In Habo Agencies Limited v Wilfred Odhiambo Musingo [2015] eKLR

the Court cautioned that a mistake of counsel is not a magic wand that automatically entitles a party to extension of time.

15) In the present case, the applicant has not explained what steps, if any, were taken between 17th February 2025 when the certificate of delay was issued and 11th September 2025 when this application was filed. The delay of approximately seven months therefore remains largely unexplained.

16) On prejudice, the applicant submits that the respondent will not suffer prejudice because the entire decretal sum is secured pursuant to the order of the court issued on 16th May 2024. While the existence of security may mitigate immediate financial prejudice, it does not cure the applicant's failure to comply with the timelines set out in the Rules or to provide a satisfactory explanation for the delay.

17) The discretion under Rule 4 is intended to advance the ends of justice, but it cannot be exercised in favour of a party who has failed to demonstrate diligence.

18) In the present case the applicant has failed to provide a satisfactory explanation for the entire period of delay, particularly the delay of approximately seven months following the issuance of the certificate

of

delay. In the circumstances, I am not persuaded that this is a proper case for the exercise of this Court's discretion.

19) Accordingly, the notice of motion dated 10th June 2025 is dismissed with costs to the respondent.

Dated and delivered at Nairobi this 6th day of March, 2026.

JAMILA MOHAMMED

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

