

IN THE COURT OF APPEAL
AT NAIROBI

(CORAM: MURUNGI B. KAIRARIA, J.A. (IN
CHAMBERS)) CIVIL APPLICATION NO. E596 OF
2025

BETWEEN

ERIC O. ODINDO

*(Suing as the administrator and
legal representative of the Estate of GEORGE
ISMAEL ODINDO (deceased)*

.....
APPLICANT

AND

NATIONAL BANK OF KENYA LTD.....1st

RESPONDENT ALICE MBINYA OMBAYO.....

2nd RESPONDENT DICKSON TUMBO

t/a SADIQUE ENTERPRISES3RD

RESPONDENT

*(An application for extension of time to file an
appeal from the ruling and order of the High Court
of Kenya at Nairobi (F. Mugambi, J.) delivered on
14th June 2024*

in

HCCA No. 445 of 2007)

RULING

1. This ruling is on an application dated 7th October 2025 by which Eric O. Odindo the applicant seeks extension of time to file an appeal out of time against the ruling and order of the Hon. Justice F. Mugambi delivered on 14th June, 2024 in

High Court Commercial& Tax Division in Civil Suit No. 445 of 2007. He seeks two principal prayers for leave to file appeal out of time and for extension of time to serve notice of appeal.

2. On 14th June 2024 the High Court dismissed the applicant's application dated 12th June, 2010 which sought review of the orders made on 7th July 2010 dismissing the applicant's Civil suit No. 445 of 2007 principally on the ground that the review jurisdiction of the court had not been properly invoked as the applicant had failed to set out the grounds of the application in the notice of motion application.
3. The applicant aggrieved by that decision, he desired to appeal to the Court of Appeal. He filed a notice of appeal on 26th June, 2024 and requested for typed proceedings in a letter of even date but did not serve the respondent with the two documents and file the appeal within sixty days of lodging the notice of appeal as required by Rule 77 and Rule 84 of the Court of Appeal Rules 2022 thus precipitating the instant application.
4. As the notice of appeal was lodged on 26th June 2024 it ought to have been served on the respondents within 7 days of lodging it that is by 3rd July, 2024 by dint of Rule 79[1] while the letter requesting typed proceedings ought to have been not only lodged with the High Court within

30 days of the

decision sought to be appealed but also copied to the respondents. The appeal itself ought to have been filed within 60 days of lodging the notice of appeal that is by 25th August, 2024.

5. The applicant did not apply for extension of time to this court until after the lapse of over one year from 25th August, 2024 when the period for filing of the appeal would have expired. The applicant attributes the complete failure to serve the notice of appeal as well as the request for proceedings to the failure of an unnamed clerk who was handed over the original documents by the advocate to serve.
6. It is stated that the unnamed clerk has since left the advocates firm and the original documents handed over to him cannot be traced leading to the presumption that the documents were not served at all. It is stated that the lack of service of the two documents was only discovered at the time of compiling the record of appeal.
7. The respondent opposes the application for extension through a replying affidavit sworn by David Nyangena on 25th February, 2026 in which it is contended that no

reason for

delay over one year and five months since the ruling was delivered, the applicant has not demonstrated that he has an arguable appeal and that grant of extension of time would be prejudicial as the suit property was sold.

8. I have considered the application for extension of time and I am not persuaded that the applicant has established the legal basis for the exercise of this court's discretion under Rule 4 of the court of appeal Rules. Blaming an unnamed advocate's clerk for the failure to serve physical copies of the notice of appeal and the letter requesting for typed proceedings is not a satisfactory reason to make the applicant worthy of the exercise of this Court's unfettered discretion. No explanation at all has been given why those two documents which must have been lodged in the High Court electronically were not served upon the respondent through the same medium.

9. This Court's discretion under Rule 4 is not to be given merely for the asking. The applicant was duty bound to provide plausible reasons for the delay which he has failed to do. [see **Leo Sila Mutiso vs. Hellen Wangari Mwangi**[1999] 2 EA

231 and ***Nicholas Kiptoo Arap Salat vs.***
lebc[2014]

KESC12 KLR.

10. In the upshot, I find and hold that the application for extension of time to file the record of appeal and to serve the notice of appeal dated 7th October 2025 is without merits and is hereby dismissed with costs to the respondent.

Dated and delivered at Nairobi this 13th day of March, 2026.

MURUNGI B. KAIRARIA

.....
JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR

