



**Shield Assurance Company Limited v Esiromo & 6 others (Civil Application E296 of 2020) [2026] KECA 548 (KLR) (13 March 2026) (Ruling)**

Neutral citation: [2026] KECA 548 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E296 OF 2020  
WK KORIR, S RADIDO & P LILAN, JJA  
MARCH 13, 2026**

**BETWEEN**

**SHIELD ASSURANCE COMPANY LIMITED ..... APPLICANT**

**AND**

**RAHAN WOTHAYA ESIROMO ..... 1<sup>ST</sup> RESPONDENT**

**RUOYA JOSEPH KAMAU ..... 2<sup>ND</sup> RESPONDENT**

**SIMON MAINA CHEGE ..... 3<sup>RD</sup> RESPONDENT**

**RABANN MWANGI CHEGE ..... 4<sup>TH</sup> RESPONDENT**

**DAVID MUIRU NJOROGE ..... 5<sup>TH</sup> RESPONDENT**

**MICHAEL GOKONYO KINYANJUI ..... 6<sup>TH</sup> RESPONDENT**

**NOBERT OMANYO WABWIRE ..... 7<sup>TH</sup> RESPONDENT**

*(An application for extension of time to file and serve a Record of Appeal out of time from the Ruling of the Employment and Labour Relations Court at Nairobi (Nduma Nderi, J.) delivered on 9th December 2016 in E&LRC Cause No. 1488 of 2010)*

**RULING**

1. On 4 June 2021, a single Judge (Murgor, JA) dismissed an application dated 16<sup>th</sup> September 2020 by the applicant seeking extension of time to file and serve a Record of Appeal out of time.
2. The applicant, being dissatisfied with the Ruling, requested for a Reference to a full bench through a letter dated 10<sup>th</sup> June 2021. The applicant cited Rule 55(1)(b) of the Court of Appeal Rules (now Rule 57(1)(b) of the Rules).



3. In rejecting the application, the single judge considered that the Ruling sought to be appealed against was delivered on 9<sup>th</sup> December 2016, a Notice of Appeal filed on 15 December 2016, but a copy of a request for proceedings was not demonstrated to have been served upon the Respondents, and that a Certificate of Delay was not exhibited with the application
4. The single judge, therefore, hinged the rejection of the application on Rule 82 (now Rule 84) of the Court of Appeal Rules, which provides:

### **Institution of appeals**

1. Subject to rule 118, an appeal shall be instituted by lodging in the appropriate registry, within sixty days after the date when the notice of appeal was lodged—
  - a. a memorandum of appeal, in four copies;
  - b. the record of appeal, in four copies;
  - c. the prescribed fee; and
  - d. security for the costs of the appeal:

Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with subrule (2) within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.

2. An appellant shall not be entitled to rely on the proviso to subrule (1) unless the appellant's application for such copy was in writing and a copy of the application was served upon the respondent.
5. The applicant had filed its submissions in support of the application on 21<sup>st</sup> April 2021.
6. In the submissions, the applicant asserted a Certificate of Delay was issued on 4<sup>th</sup> March 2020, and that it had 60 days within which to file a Record of Appeal (by 4 May 2020), but the Record was only filed on 25<sup>th</sup> September 2020 because of reasons beyond its control.
7. According to the applicant, the reason for the delay was the impact of the COVID-19 public health pandemic, which led to the closure of offices and the Court registry, and thus, it could not lodge hard copies of documents. The applicant indicated that its advocates were compelled to close offices from 25<sup>th</sup> March 2020 to 17<sup>th</sup> August 2020.
8. The applicant also contended that the online filing system was only introduced from 1<sup>st</sup> July 2020, when the time for filing the Record of Appeal had lapsed.
9. The Respondents filed their submissions on 21<sup>st</sup> March 2025 and urged that the single judge had applied her mind to the relevant factors and exercised her discretion correctly.
10. In the view of the Respondents, there had been an inordinate delay of 4 years, which the applicant had not explained.
11. Citing *Moi University of Eldoret & Ar v Prof Ezekiel Kiprop & Ar*, Civil Application No. In Nyeri of 2019 (UR.1/2019), the Respondents contended that the applicant was calling upon the Court to relook at a decided matter and submitted that while the Court had residual power in limited cases to re-open decided matters, the Court ought to exercise its discretion cautiously and sparingly.



12. The Court addressed its mind to the governing principles in an application of this nature in *Gitetu v Kenya Commercial Bank Ltd* (2009) KLR 545, thus:
  1. In an application under Rule 4 of the Court of Appeal Rules, a single Judge exercises an unfettered discretion, but such discretion has to be exercised judicially and upon proper principles of law.
  2. In exercising the unfettered discretion as granted by the rule, the single member of the Court did so on behalf of the whole Court and the full bench of the Court would only be entitled to interfere with the exercise of the discretion if it was shown that in the process of exercising the discretion, the single Judge:
    - a. took into account an irrelevant matter which he ought not to have taken into account or;
    - b. he failed to take into account a relevant matter which he ought to have taken into account or;
    - c. he misapprehended some aspect of the law applicable or;
    - d. his decision was plainly wrong and could not have been arrived at by a reasonable tribunal properly directing itself to the evidence and the law applicable to it.
  3. A reference to the full Court is not an appeal and it is not enough to show that the full court would have come to a different result if it had been sitting in the place of the single Judge.
  4. For an applicant to succeed in an application under Rule 4 of the Court of Appeal Rules, he has to satisfy the Court that:
    - a. the delay was not inordinate and has been sufficiently explained;
    - b. the intended appeal was arguable; and
    - c. no prejudice would be caused to the respondent if the application to extend time was allowed.
13. The primary consideration the single judge factored in dismissing the applicant's cause for extension of time was that the applicant had not demonstrated that a request for copies of proceedings sent to the Superior Court was copied to the Respondents, and the failure to place before the Court a Certificate of Delay.
14. The considerations which the single judge found decisive in dismissing the applicant's quest are derived from the Rules 84(1) & (2) of the Court of Appeal Rules.
15. The applicant did not suggest before this Court that the single judge considered irrelevant matters, failed to consider relevant matters, misapplied the law or that the decision was so plainly wrong as to be disturbed.
16. There was also no attempt by the applicant to secure leave to introduce a copy of the Certificate of Delay said to have been issued on 4<sup>th</sup> March 2020 by the Superior Court, or file a response to the assertion by the Respondents that the letter requesting copies of proceedings was never copied or sent to them.



17. The conclusion we reach is that the single judge did not exercise her discretion wrongly to warrant an interference.

18. The upshot being that the Reference is dismissed with costs to the Respondents.

**DATED AND DELIVERED AT NAIROBI ON THIS 13<sup>TH</sup> DAY OF MARCH, 2026.**

**W. KORIR**

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

**RADIDO STEPHEN OKIYO**

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

**PAUL LILAN**

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

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

Signed

**DEPUTY REGISTRAR**

