



**Co-operative Bank of Kenya Limited v Owino alias Victor Brian
Owino alias Victor Brian Owino Kojo & 2 others (Civil Application
E154 of 2024) [2025] KECA 344 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KECA 344 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E154 OF 2024
AO MUCHELULE, JA
FEBRUARY 21, 2025**

BETWEEN

THE CO-OPERATIVE BANK OF KENYA LIMITED APPLICANT

AND

**OWINO KOJO ALIAS VICTOR BRIAN OWINO ALIAS VICTOR BRIAN
OWINO KOJO 1ST RESPONDENT**

KHETIA DRAPERS LIMITED 2ND RESPONDENT

JENKS AUCTIONEERS 3RD RESPONDENT

*(An application for extension of time to file a notice of appeal out of time
against the judgment and decree of the High Court of Kenya at Bungoma
(Kemei, J.) dated 30th September 2023 in H.C.C.C. No. E026 of 2022)*

RULING

1. In CMCC No. 664 of 2016, the 1st respondent, Owino Kojo alias Victor Brian Owino alias Victor Brian Owino Kojo sued the applicant, Co-operative Bank of Kenya Limited, and the 2nd respondent Khetia Drapers Limited, for breach of contract and defamation. The suit was allowed as against the applicant who was ordered to pay Kshs.500,000 to the 1st respondent. Both the applicant and the 1st respondent appealed to the High Court at Bungoma. In a decision that was rendered on 30th September 2024, the applicant's appeal was dismissed and the 1st respondent's appeal allowed, the general damages being reviewed upwards to Kshs.1,000,000.
2. The present application is dated 24th October 2024 by the applicant. It is sought that leave be granted to it to file and serve a notice of appeal out of time. The applicant's case is that it was aggrieved by the decision of the learned judge (Kemei, J) and ought to have filed a notice of appeal by 14th



November 2024, but did not. In the supporting affidavit of its Legal Officer, Jackson Oire, he was advised to instruct a new lawyer and to appeal but that the internal approvals of the applicant's policy making organs caused the delay; that on 16th October 2024 the previous advocates were requested to surrender the file to the newly appointed law firm which had been instructed to appeal; and that on 22nd October 2024 the two law firms entered into a consent to enable the change of advocates. The present application was then filed.

3. I consider that the delay in bringing the application for extension of time was for less than a month, counting from the date the notice of appeal should have been filed. I consider the explanation as being satisfactory.
4. The proposed appeal will contend that the learned judge erred in the holding that the applicant had breached the contractual relations with the 1st respondent despite making an earlier finding that the applicant may not have been aware that the transaction had been declined due to instantaneous nature of the transaction, and that the setting aside of the award of Kshs.500,000.00 and substituting it with an award of Kshs.1,000,000.00 was not made on any given reasons. On the face, these are not frivolous grounds.
5. The application was served but did not elicit any response. It was therefore not shown that the respondent will be prejudiced, if the application is allowed.
6. I am aware of the settled principles that govern the exercise of the Court's discretion under Rule 4 of the Court of Appeal Rules, 2022. In dealing with the application, the Court will want the applicant to explain why he did not bring the notice of appeal within time; to show that the delay that the Court is dealing with is not inordinate; that the intended appeal has possible chances of success; and that the respondent will not be unduly prejudiced, if time to appeal extended. (See Paul Wanjohi Mathenge vs Duncan Gichane Mathenge [2013] eKLR; Kihumba vs Kimotho & Another [2024] KECA 345 (KLR)).
7. Accordingly, I allow the application. The applicant shall within 7 days, file and serve the notice of appeal and thereafter within 45 days, file and serve the memorandum and record of appeal.

DATED AND DELIVERED AT KISUMU THIS 21ST DAY OF FEBRUARY 2025.

A. O. MUCHELULE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

