



REPUBLIC OF KENYA



**Faulu Microfinance Bank Limited v Muyodi t/a Rhemat Auctioneers & 2 others  
(Civil Application E172 of 2024) [2025] KECA 610 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KECA 610 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E172 OF 2024  
LK KIMARU, JA  
MARCH 28, 2025**

**BETWEEN**

**FAULU MICROFINANCE BANK LIMITED ..... APPLICANT**

**AND**

**WALTER MUSUNGU MUYODI T/A RHEMAT AUCTIONEERS .... 1<sup>ST</sup>  
RESPONDENT**

**SAMSON ITONDE TUMBO T/A CRESCENT AUCTIONEERS .... 2<sup>ND</sup>  
RESPONDENT**

**PAUL BARASA WAMOTO T/A PAWABA AUCTIONEERS .. 3<sup>RD</sup> RESPONDENT**

*(Being an application for extension of time to file and serve the record  
of appeal from the Judgment of the High Court of Kenya at Bungoma  
(R. Ougo, J) dated 22nd October, 2024 in HCCA No. 46 of 2023)*

**RULING**

1. The Applicant, Faulu Microfinance Bank Limited, was aggrieved by the Ruling rendered on 22<sup>nd</sup> October, 2024 by the High court sitting at Bungoma exercising its jurisdiction as the 1<sup>st</sup> appellate court. The applicant, by a notice of motion dated 19<sup>th</sup> November, 2024 moved this Court pursuant to Rule 4 of the Court of Appeal Rules 2022, seeking to be granted leave to file and serve the notice of appeal out of time. The application is based on the grounds stated on the face of the application and the annexed affidavit of Fredrick Nyabuti, the legal officers of the applicant.
2. In summary, the applicant states that it was aggrieved by the Ruling of the superior court delivered on 22<sup>nd</sup> October, 2024. It filed a notice of appeal on 11<sup>th</sup> November, 2024 which, unfortunately, was eight (8) days out of time. The applicant therefore craves for this Court's order to extend time to enable it pursue the intended appeal to this Court. The applicant explained the reason for the delay in lodging



the notice of appeal in time to bureaucratic delays occasioned by the late communication by their advocate on record and the delay in giving the requisite instructions to their advocates to lodge the appeal in time because the deponent was on leave from work at the material time. The applicant urged the Court to grant the application in the interests of justice.

3. The respondents' advocate was duly served by the Court and informed of the scheduled hearing date. The respondents neither filed a replying affidavit in opposition to the application nor written submissions in opposition to the application thereof. The application is therefore unopposed.
4. This Court has unfettered discretion under Rule 4 of the Court of Appeal Rules to extend time for any step intended to be done within the period stipulated by the Rules in *Paul Wanjohi Mathane v Duncan Gichare Mathenge* [2013] eKLR this Court held thus:

“The discretion under Rule 4 is unfettered, but it has to be exercised judiciously, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance.”

5. In the present application, the applicant has given the reason for the delay in lodging the appeal in time. Their advocate on record informed them of the decision about a week after the decision had been rendered. As fate would have it, at the time there was no one at the applicant's office to give instructions to the advocate on how to proceed with the case. The officer handling the case was on leave from work.
6. By the time the officer returned from leave, the period by which the appeal was required to be lodged before this court had elapsed. The period of delay was eight (8) days. This Court is persuaded by the reasons advanced by the applicant for the delay. It was clearly a case of circumstances conspiring to ensure that what transpired did happen. May be it was a case of Murphy's Law. The applicant filed this application within seven (7) days of discovering that they were out of time. The applicant was vigilant and diligent. In addition, the application is unopposed.
7. In the premises therefor, the application is allowed. The applicant is granted extension of time to lodge and serve the notice of appeal. The same shall be filed and served within fourteen (14) days of today's date. There shall be no orders as to costs.

**DATED AND DELIVERED AT KISUMU THIS 28<sup>TH</sup> DAY OF MARCH, 2025.**

**L. KIMARU**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

