



REPUBLIC OF KENYA



**Kabogo & another v KCB Bank Kenya Limited & another (Civil Application  
E352 of 2024) [2025] KECA 456 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KECA 456 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E352 OF 2024**

**M NGUGI, JA**

**MARCH 7, 2025**

**BETWEEN**

**JOHN NGUGI KABOGO ..... 1<sup>ST</sup> APPLICANT**

**DORIS NAMAYI ORIKO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**KCB BANK KENYA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**BENJAMIN KISOI T/A LEGACY AUCTIONEERING SERVICE .... 2<sup>ND</sup>  
RESPONDENT**

*(Being an application for extension of time to file an appeal against the ruling of the High Court in Kiambu (Mshila J.) dated 31st May 2024 in KIAMBUR HCCC NO. E006 OF 2024)*

**RULING**

1. In the application dated 6<sup>th</sup> July 2024, the applicants seek extension of time to file a notice of appeal from the ruling of the High Court in Kiambu (Mshila J.) in HCCC No. E006 of 2024 dated 31<sup>st</sup> May 2024. They further pray that the notice of appeal annexed to the application be deemed as duly filed upon payment of the requisite fees.
2. I note that the application is filed on behalf of the applicants by the firm of MGW Advocates, LLP. This firm has also filed an application dated 24<sup>th</sup> September 2024 seeking to cease acting for the applicants. I note, however, that the firm has not served the application on the applicants, so I will confine myself to the application for extension of time which was, in any event, the application listed for hearing before me on 12<sup>th</sup> February 2025.
3. The application for extension of time, which is expressed to be brought under rule 4, 5(2)(b) and 75 of the *Court of Appeal Rules, 2010*, is based on the grounds set out on its face and on an affidavit sworn by the 1<sup>st</sup> applicant, John Ngugi Kabogo, on 6<sup>th</sup> July 2024. The applicants aver that the ruling that they



seek to appeal from was delivered on 31<sup>st</sup> May 2024. They applied for a copy of the ruling on 4<sup>th</sup> June 2024, but it was not until 28<sup>th</sup> June 2024 that it was furnished to them. The information they received with respect to the delay in furnishing them with the ruling was that the file was still in chambers and was yet to be returned to the registry.

4. Upon receipt of the ruling, they instructed their advocates to appeal from the said ruling, but by this time, the period for filing a notice of appeal had lapsed. They attribute the failure to file the notice on time on the failure by the registry to issue them with the ruling on time. Further, that the delay was also contributed to by the fact that the 1<sup>st</sup> respondent was unwell between 10<sup>th</sup> and 24<sup>th</sup> June 2024. It was only after regaining his health that the 1<sup>st</sup> applicant was able to issue instructions with respect to the appeal.
5. The applicants aver that the delay of 21 days is not inordinate and is excusable in the circumstances, and they pray that the Court allows their application.
6. The applicants have filed submissions dated 6<sup>th</sup> August 2024 reiterating the arguments in the affidavit in support of their application.
7. There is no response from the respondents, though there is evidence of service of the hearing notice on their advocates, the firm of Garane & Somane, Advocates..
8. I have considered the application, the affidavit in support, and the applicants' submissions. Rule 4 of this [Court's Rules](#) vests in the Court the discretion to extend time for the doing of anything prescribed under the Rules. The main factors to be considered in exercising such discretion are well settled. They are, firstly, the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, finally, the degree of prejudice to the respondent if the application is granted- see [Fakir Mohammed v Joseph Mugambi & 2 others](#) [2005] eKLR (Civil Application No. Nai. 332 of 2004 (Nyr. 32/04)) and [Mwangi v Kenya Airways Limited](#) (2003) KLR 486.
9. In this matter, the ruling was delivered on 31<sup>st</sup> May, 2024, while this application was filed on 6<sup>th</sup> July, 2024, 36 days later. The applicants should have filed the notice of appeal within 14 days from 31<sup>st</sup> May 2024, so there was a delay of about 21 days.
10. The applicants attribute the delay in filing the notice of appeal, first, on the failure of the court registry to furnish them with the ruling until almost a month after its delivery and, secondly, on the 1<sup>st</sup> applicant's indisposition.
11. Taking into considerations these reasons and noting that the period of 21 days cannot be said to be inordinate in the circumstances, I find that the application dated 6<sup>th</sup> July 2024 is merited, and I hereby allow it. The notice of appeal dated 6<sup>th</sup> July 2024 shall deemed as duly filed upon payment of the requisite Court fees. The applicants shall file and serve their record of appeal within 45 days from the date hereof. There shall be no order as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF MARCH, 2025.**

**MUMBI NGUGI**

.....

**JUDGE OF APPEAL**

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

Signed



**DEPUTY REGISTRAR.**

