



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mboge v National Bank of Kenya (Civil Application  
E021 of 2025) [2025] KECA 644 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KECA 644 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E021 OF 2025**

**LK KIMARU, JA**

**APRIL 4, 2025**

**BETWEEN**

**JOHN MUHEHE MBOGE ..... APPLICANT**

**AND**

**NATIONAL BANK OF KENYA ..... RESPONDENT**

*(Being an Application for extension of time to appeal out of time from  
the judgment of the High Court of Kenya at Kakamega (S. Chirchir, J.  
dated 30th January, 2025 in HC Civil Appeal No. E061 of 2023)*

**RULING**

1. The applicant, John Muhehe Mboge, was aggrieved by the judgment rendered on 30<sup>th</sup> January, 2025 by the High Court sitting at Kakamega (S. Chirchir, J). The applicant states that, although the judgment was delivered on 30<sup>th</sup> January, 2025, it was not until 10<sup>th</sup> February, 2025 that he was able to access a copy of the judgment. That is when he made the decision to appeal against the said decision. He had applied to the court to be supplied with typed certified copies of the proceedings and judgment. He made an application to this court under Rule 4 of the [Court of Appeal Rules, 2022](#) to be granted leave to file the notice of Appeal out of time. The applicant urged the Court to grant the application in the interest of justice as, in his view, he had timeously filed the present application and was desirous of pursuing his appeal to this Court.
2. The respondent was served with the hearing notice by the Court. The respondent neither filed a response to the application nor submissions in opposition to the application. The application is therefore unopposed.
3. Rule 4 of the [Court of Appeal Rules 2022](#) grants this Court unfettered discretion to extend time for any party wishing to take any steps beyond the time stipulated by the Rules. The discretion, however, is



required to be exercised judicially. In *Stanley Kebore Mwangi & 2 others v Kenyamwi Trading Company Ltd* [2015] eKLR, this Court held thus:

“The principles guiding the Court on an application for extension of time premised upon Rule 4 of the Rules are well settled and there are several authorities on it. The principles are to the effect that the power of the Court in deciding such an application are discretionary and unfettered. It is, therefore, upon an applicant under this Rule to explain to the satisfaction of the Court that he is entitled to the discretion to be exercised in his favour.”

4. In the present application, the applicant explained the reason for the delay in lodging the notice of appeal in time. The applicant was not able to access the actual copy of the judgment until the period that he was required to file an appeal had expired. The applicant further explained that he was unable to access the proceedings because the court file was with the trial Judge who, at the time, had been transferred from Kakamega. By the time the file was forwarded to High Court at Kakamega, the time in which the appeal was to be filed had elapsed. This Court is persuaded by the reasons advanced by the applicant for his failure to file the appeal on time.
5. It was clear that the delay in lodging the notice of appeal in time was on account of reasons beyond his control. He could not access a copy of the judgment until the period that he was supposed to lodge the notice of appeal had elapsed. The delay was not inordinate. He timeously filed this application once he formed the view that he needed to exercise his right of appeal to this Court. This Court will exercise its discretion in the applicant’s favour.
6. In the premises therefor, the application has merit. It is hereby allowed. The applicant is granted leave to file appeal out of time. The notice of appeal 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 4<sup>TH</sup> DAY OF APRIL, 2025.**

**L. KIMARU**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of original.

Signed

**DEPUTY REGISTRAR.**

