



**Kamau v Kenya Fire Appliances Limited (Civil Application  
E639 of 2024) [2025] KECA 903 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KECA 903 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E639 OF 2024  
LA ACHODE, JA  
MAY 23, 2025**

**BETWEEN**

**VICTOR LOUIS KAMAU ..... APPELLANT**

**AND**

**KENYA FIRE APPLIANCES LIMITED ..... RESPONDENT**

*(Being an application for extension of time to file and serve a Record of Appeal from the Judgment and order of the High Court, (Mwita J) dated 23rd June, 2023 in Insolvency Petition No. E034 of 2020)*

**RULING**

1. Victor Louis Kamau, the applicant, filed a Notice of Motion dated 25<sup>th</sup> November 2024 invoking all manner of provisions of the law, including Articles 48 and 159(2)(d) of *the Constitution*, Section 3A and 3B of the *Appellate Jurisdiction Act*, and rules 1(2), 41, 42(1), 4 and 88 of the Court of Appeal Rules, 2010. (Invoking Rule 4 of the Court of Appeal Rules, 2022 would have sufficed).
2. The applicant is seeking for orders of extension of time for the filing and service of the Record of Appeal, against the judgment and decree of Mwita J. dated 23<sup>rd</sup> June 2023, in Insolvency Petition No. E034 of 2020. Further, that the record of appeal filed on 23<sup>rd</sup> August, 2024 and served on 5<sup>th</sup> September, 2024 be deemed as properly filed and served and the costs of this application to abide the outcome of the intended appeal.
3. The application is based on the grounds on the face of it and the applicant's supporting affidavit sworn on 25<sup>th</sup> November, 2024.
4. The applicant deposed that the appeal arose from a judgment delivered by the High Court at Nairobi Commercial and Tax Division, by Mwita J. on 23<sup>rd</sup> June 2023, in Insolvency Petition No. E034 of 2020, which ruled in favor of Kenya Fire Appliances Limited the respondent herein, against appellant.



5. Aggrieved by the judgment, the applicant filed an appeal on grounds that the learned Judge erred in law and fact by: accepting the respondent's evidence without scrutiny; failing to apply Section 112 of the *Evidence Act* on proof of company records and misinterpreting the legal framework for shareholder meetings under the *Companies Act*.
6. The applicant stated that the delay in filing the appeal was caused by administrative hurdles at the Court of Appeal Registry, including: the initial rejection of his record on 15<sup>th</sup> August 2024 for incorrect formatting and a second rejection on 20<sup>th</sup> August, 2024 for improper scanning. The record was finally approved and payment of fees made on 23<sup>rd</sup> August 2024.
7. The applicant deposed that the record of appeal was initially submitted in time, on 12<sup>th</sup> August 2024, and the Registry's procedural requirements which caused the delay were beyond his control. The applicant stated that he had annexed a certificate of delay which showed that the registry took 319 days to prepare the proceedings from 3<sup>rd</sup> July 2023 to 17<sup>th</sup> May 2024 and the Memorandum of Appeal demonstrating that the grounds of the intended appeal are arguable with high prospects of success.
8. The appellant deposed that the respondent stands to suffer no prejudice if the extension is granted. Further that the appeal raises substantial questions of law on corporate governance and minority shareholder rights and the Court's discretion under Article 159 (2) (d) and Rule 4 should favour substantive justice over technicalities. He prayed that leave be granted for him to amend the Record of Appeal if necessary, and serve all documents on the respondent's advocates.
9. The firm of M/s Kyalo & Associates Advocates filed submissions dated 23<sup>rd</sup> January 2025, on behalf of the applicant and submitted that the delay of approximately 3 months was caused by administrative bottlenecks at the Court Registry. Specifically, that the Record of Appeal was filed on 12<sup>th</sup> August, 2024 and the Deputy Registrar rejected it on 15<sup>th</sup> August 2024 and there was subsequent requirement for the appellant to reformat it into two volumes.
10. The applicant urged on the strength of the decision in *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR that the law does not set out any minimum or maximum period of delay, and the decision in *Cecilia Wanja Waweru v Jackson Wainaina Muiruri & Lucy Nduta Runge* [2014] eKLR that there is no set rule as to what constitutes inordinate delay and that whether or not a party is guilty of inordinate delay depends on the circumstances of the case.
11. Counsel also referred to the case of *Edith Gichugu Koine v Stephen Njagi Thoithi* [2014] eKLR where the court outlined factors for consideration, including the period of delay, reasons for delay, and prejudice to the respondent and whether the matter raises issues of public importance, amongst others.
12. On the merits of the intended appeal, the applicant argued that a delay of 3 months was not inordinate, and that it resulted from administrative bottlenecks at the Court Registry. By the time the Deputy Registrar approved the record for filing, it was out of time by one or two days. That it is in the interest of justice that the period of time for filing the appeal be extended to cure the delay aforesaid. He urged that the intended appeal is arguable and meritorious, warranting judicial intervention in the interest of justice and the respondent will suffer no prejudice if the extension is granted. He urged the Court to allow the application, extend the filing period, and let costs abide the outcome of the appeal.
13. The firm of M/s Litoro & Omwebu Advocates filed written submissions dated 21<sup>st</sup> January 2025 on behalf of the respondent, in opposition to the Notice of Motion and urged that the application is defective and incompetent since the Record of Appeal was filed out of time without prior leave of the Court. It was argued that, it is undisputed that the appellant made no attempt to lodge the appeal



within 60 days, which ended on 16<sup>th</sup> July 2024, from 17<sup>th</sup> May 2024, when the certified proceedings were ready, and no explanation or excuse was given for such default.

14. The respondent contended that although the appellant had admitted that the delay was approximately 3 months, the attempt to lodge the impugned record of appeal was first made on 12<sup>th</sup> August 2024, over 27 days after the 60<sup>th</sup> day, without any just reason or excuse.
15. The respondent relied on several authorities, including: *Edith Gichugu Koine v Stephen Njagi Thoithi* [2014] eKLR, to identify the factors the Court ought to take into account in considering extension of time; *Abdul Aziz Ngoma v Mungai Mathayo* [1976] eKLR, to urge that discretion to extend time under rule 4 only comes into existence after 'sufficient reason' for extending time has been established; and, *Nicholas Kiptoo Arap Korir Salat v IEBC* [2014] eKLR to urge that a party must first seek leave or enlargement of time to file an appeal out of time.
16. It was contended for the respondent that it would suffer great prejudice and miscarriage of justice, if the Court allows this application, as it would assist a negligent and reckless applicant, who is not desirous of pursuing an appeal, but is more focused on indefinitely keeping the respondent in Court. Also, that the applicant has not demonstrated that he has an arguable appeal, as the decision of the superior Court was sound and in accordance with the law. That it resulted from proper exercise of discretion.
17. The respondent urged the Court to find that the applicant has not satisfied the factors required to allow the application and dismiss it with costs.
18. I have considered the grounds of the application, the affidavits on record and the submissions of the parties. The main issue that arises for determination is whether this Court should deploy its discretion to grant an extension of time to the applicant to file and serve the Record of Appeal.
19. The legal framework governing this application is found in rule 4 of the Court of Appeal Rules, 2022 which provides that:

“The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”

This discretionary power must be exercised judiciously, guided by well-established principles that have been crystallized through judicial precedent.

20. In *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* (Nairobi Civil Application No. 255 of 1997), the Court of Appeal articulated the key considerations that should guide the exercise of this discretion thus:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that, in general, the matters which this Court takes into account in deciding whether to grant an extension of time are: first, 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 fourthly the degree of prejudice to the respondent if the application is granted.”

21. Applying these principles to the present case, I considered the length of the delay and whether the reason thereof was reasonable or excusable. The record shows that the impugned judgment was



delivered on 23<sup>rd</sup> June 2023. Following the issuance of the Certificate of Delay on 17<sup>th</sup> May 2024, the appellant had until 16<sup>th</sup> July 2024 to file the Record of Appeal.

Therefore, the eventual filing on 23<sup>rd</sup> August 2024 represented a delay of 38 days.

22. While this period is not insignificant, it is notable from the sequence of events that the appellant made several efforts to comply with procedural requirements. Specifically, the Record of Appeal was initially rejected on 15<sup>th</sup> August, 2024 due to formatting requirements, and subsequently on 20<sup>th</sup> August, 2024 for scanning irregularities, before finally being admitted on 23<sup>rd</sup> August, 2024.

23. As stated in the Chemaringo case (*supra*)

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

It is my considered view that the appellant, provided a plausible explanation that the Court finds to be satisfactory.

24. Regarding whether the intended appeal is arguable, the Memorandum of Appeal raises substantial questions of law concerning the interpretation of Section 112 of the *Evidence Act* and various provisions of the *Companies Act*. These grounds challenge the High Court's findings on matters of corporate governance and minority shareholder rights. These are issues which the Court of Appeal in *Mumo Matemu v Trusted Society of Human Rights Alliance* [2013] eKLR recognized as being of significant legal importance and emphasized that where an appeal raises substantive issues of public importance, minor procedural delays may be excused to allow determination on merits.

25. The Court is also cognizant of the fact that one arguable ground is sufficient to warrant a chance for the appeal to be argued, and it is not necessary that such a ground must eventually succeed. I find therefore, that the issues raised herein are not idle. I say no more on this, lest I should embarrass the bench that will eventually be seized of the substantive appeal.

26. On the question of the prejudice to be suffered if the application is allowed, the respondent's contention that it would suffer prejudice must be evaluated in light of the principle established in *Salim Abdalla Bakshwein v Kenya Revenue Authority* [2020] eKLR, where the Court granted an extension despite a 3-month delay. The Court noted that the respondent had failed to demonstrate any concrete prejudice beyond the ordinary inconvenience of prolonged litigation. In the present matter, the respondent's allegations of prejudice are similarly generalized and unsupported by specific evidence.

27. Balancing all these considerations, and guided by the constitutional imperative under Article 159(2) (d) that justice shall be administered without undue regard to technicalities, the Court finds that the interests of justice in this case are best served by granting the extension sought. The Applicant has provided a reasonable explanation for the delay, demonstrated that the appeal raises arguable points of law, and shown that no substantial prejudice would be occasioned to the Respondent.

Consequently, I find that this appeal has merit and is allowed with the following orders:

- i. The Notice of Motion dated November 25, 2024 is hereby allowed.
- ii. The Record of Appeal filed on August 23, 2024 is deemed to have been duly filed and served within the prescribed time.



iii. Costs of this application shall abide the outcome of the intended appeal.

It is so ordered

**DATED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF MAY, 2025.**

**L. ACHODE**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

