



**Kiambati v Sanlam General Insurance Co Ltd (Civil Appeal (Application)  
E081 of 2025) [2025] KECA 1233 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1233 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL (APPLICATION) E081 OF 2025  
S OLE KANTAI, JA  
JUNE 27, 2025**

**BETWEEN**

**JULIUS KIAMBATI ..... APPLICANT**

**AND**

**SANLAM GENERAL INSURANCE CO LTD ..... RESPONDENT**

*(An application for extension of time to file notice of appeal out of time and a Record of Appeal against the Judgment of the High Court at Meru (E. M. Muriithi, J.) delivered on 23rd January, 2025 in HC Civil Appeal No. E054 of 2024)*

**RULING**

1. The applicant Julius Kiambati has by Motion on notice brought, inter-alia, under rule 4 of this Court's rules prayed in the main that I be pleased to extend time to serve notice of appeal dated 24<sup>th</sup> March, 2025 against the judgment of Muriithi, J. delivered on 23<sup>rd</sup> January, 2025 in Meru High Court Civil Appeal No. E054 of 2024; that I be pleased to extend time for filing and serving record of appeal and admitting record of appeal dated 28<sup>th</sup> March, 2025 and deem it as properly filed and served. In grounds in support of the application and in the supporting affidavit the applicant says that he filed a notice of appeal on 3<sup>rd</sup> February, 2025 which was not lodged with the Court but was served on the respondent on 10<sup>th</sup> February, 2025 "...albeit on an erroneous email address..." ; that the respondent was satisfied with the judgment of the High Court and proceeded to settle it; that counsel for the applicant noted in the course of time that he had "... erroneously sent the email to a wrong address..." that failure to serve notice of appeal on time was inadvertent and a mistake by counsel on record which should not be visited on the applicant; that the application has been made without inordinate delay.
2. I have seen the judgment where the appeal was allowed where an award of Kshs.10,200,000 damages for loss of user was set aside and substituted with an award of Kshs.1,800,000 and other awards by the



subordinate court left unchanged. I have also seen draft Memorandum of Appeal and a screenshot of notice of appeal.

3. In a replying affidavit Dominic Etyang, the respondent's Legal Officer says amongst other things that after judgment was delivered by the High Court of Kenya at Meru the respondent (Sanlam General Insurance company Limited) proceeded to settle the decretal sum by allowing release of the funds deposited in a joint interest earning account in the names of the advocates; that the applicant transferred a motor vehicle to the respondent to settle the remaining part of the decretal sum; that by letter dated 20<sup>th</sup> February, 2025 the appellant forwarded the original log book/certificate of registration to the respondents advocates. The respondent states at paragraphs 7-10 (inclusive) of replying affidavit.

“7. That the motor vehicle was transferred to us and our Advocates on record proceeded to negotiate on costs and interest payable. The Applicant's Advocates wrote to our Advocates on record on 27<sup>th</sup> March, 2025 stating that the remaining balance of the decretal sum and interest was Kshs.4,106,227.75/ = and were agreeable that costs of the lower court to offset the costs of the High Court. Annexed hereto and marked as DE - 5 is a copy of the letter dated 27<sup>th</sup> March 2025).

8. That indeed we settled the decretal amount and agreed interest of Kshs.4,106,227.75 in full. Annexed hereto and marked as DE- 6 is a copy of the remittance advise of Kshs.4,106,227.75).

9. That having settled the decretal amount and interest fully the parties herein entered into a consent discharging NCBA Bank Plc over the Bank Guarantee issued and marking the matter as settled and the file to be closed. Annexed hereto and marked as DE - 7 is a copy of the said consent dated 6/04/2025 and a Bank Guarantee dated 30<sup>th</sup> August 2024).

10. That in the view of the foregoing, it is clear that the Applicant's and Respondent's Advocates were in constant communication either via email or hard copy letters. Therefore, the Applicant blatantly ignored to file and serve Notice of Appeal in accordance with Court of Appeal Rules, 2022.”

4. It is further deponed that the applicant's and the respondent's lawyers were in constant communication on email on 20<sup>th</sup> February, 2025, 24<sup>th</sup> March, 2025, 26<sup>th</sup> March, 2025, 27<sup>th</sup> March, 2025, 28<sup>th</sup> March, 2025 and 16<sup>th</sup> March, 2025 (the emails are attached), that:

“...If an email sent on Gmail platform is undelivered, a non-delivery report is sent to the sender. No evidence of non-delivery has been produced....”

5. The deponent wonders why all other mail was delivered but not the one forwarding notice of appeal; that notice of appeal was not lodged in accordance with the law and was not served on the respondent within 7 days as required; that no appeal was lodged within 60 days in breach of rule 84 of the rules of this Court; that there is no letter bespeaking proceedings but if there was it was not copied to the respondent. The respondent states at paragraphs 13 and 14 (inclusive) of the affidavit:

“ 13. That the instant application is an afterthought, after payment of the Decretal Sum and Interest and therefore, the Applicant has not given plausible reason to enable the Court of Appeal to exercise its discretion under Rule 4 of the Court of Appeal Rules, 2022. The Applicant's conduct demonstrates a litigant who



was not keen to file an Appeal. He suddenly realised he can file an Appeal after we made payment and parties signed consent marking the matter as settled.

14. That the Applicant has failed to demonstrate that any steps were taken to follow up on the court proceedings, including but not limited to making payment for the said proceedings.”

6. Attached to the affidavit are various documents including the judgment intended to be appealed and correspondences exchanged by the parties through email. There is a consent executed by lawyers for both parties filed at the High Court of Kenya at Meru dated 16<sup>th</sup> April, 2025 where the parties agree that the respondents having fully settled the matter NCBA Bank Limited Kenya PLC is discharged from a bank guarantee it had given and:

“ That the matter be marked as fully settled and the file be closed.”

7. The principles that apply in an application of this nature are well known and were summarized in the oft-cited case of *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231 as follows:

“ It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated 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.”

8. I am told here that the applicant’s lawyer forwarded an unlogged notice of appeal to a wrong address. I have not been told which wrong address it was. The respondent responded, and I am persuaded by that argument, that if a wrong email address was used there would have been a notification to that effect. I have also not been told why it took the applicant from 23<sup>rd</sup> January, 2025 when judgment of the High Court was delivered to 25<sup>th</sup> April, 2025 (the date of the Motion) – a period of over 3 months – to bring the application. There is, in addition, the consent letter filed at the High Court where the parties agreed that the issues between them were fully settled. So there is no chance of an appeal succeeding. The litigation ended and I think it would be prejudicial to the respondent if I exercised my direction in favour of the applicant. I find the Motion unmerited and I dismiss it with costs to the respondent.

**DATED AND DELIVERED AT NYERI THIS 27<sup>TH</sup> DAY OF JUNE, 2025.**

**S. OLE KANTAI**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

