



**Sciborski v Golden Century Limited (Civil Application  
E367 of 2024) [2025] KECA 1163 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1163 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E367 OF 2024**

**F SICHALE, JA  
JUNE 20, 2025**

**BETWEEN**

**PROF. ROMUALD J. SCIBORSKI ..... APPELLANT**

**AND**

**GOLDEN CENTURY LIMITED ..... RESPONDENT**

*(Being an Application for Extension of Time to file a Notice of Appeal against the Ruling and Orders of the High Court of Kenya at Nairobi (Mongare J), dated 12th February 2024 In(Nairobi Milimani Commercial & Tax Division Misc Case No. E068 of 2023)*

**RULING**

1. By the motion on notice dated 17<sup>th</sup> July 2024, brought pursuant to the provisions of Sections 3, 3A & 3B of the *Appellate Jurisdiction Act* and Rules 4 & 31 of the Court of Appeal Rules 2022, Prof. Romuald J. Sciborski (“the applicant” herein) has invoked the jurisdiction of this Court sitting as a Single Judge seeking the following orders;
  - “i. That this court be pleased to deem the Notice of Appeal dated 14/02/2024 as duly filed and further extend time within which to serve the same upon the respondent by deeming the service done on 16/07/2024 as proper.
  - ii. That the costs of and incidental to this application do abide the outcome of the appeal.”
2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by the applicant who deposed inter alia That being dissatisfied with the ruling delivered by Mongare J, in Milimani Commercial & Tax Division Misc Case No. E608 of 2023, he instructed his advocates to lodge an appeal against the same.



3. That, his advocates filed a Notice of Appeal on 14<sup>th</sup> February 2024, in accordance with Rule 75 of the Court of Appeal Rules despite the difficulties they encountered in securing a stamped copy from the Registry and it was not until 16<sup>th</sup> July 2024, That the Deputy Registrar availed the same.
4. He thus deposed That failure to serve the Notice of Appeal upon the respondent was occasioned by the registry in failing to avail the same on time despite follow up by his advocates.
5. The motion was opposed vide a replying affidavit sworn on 20<sup>th</sup> March 2025, by Lan Xiao one of the Directors of the respondent who deposed inter alia That the applicant had not provided any valid justification for the delay in filing the appeal and That in absence of a substantive explanation, the application was merely a delaying tactic meant to undermine the principal of finality in litigation and That, given That the court had repeatedly dismissed similar claims, the instant motion was a needless drain on judicial time.
6. It was submitted for the applicant That the delay in filing the Notice of Appeal was occasioned as a result of a mistake or otherwise an oversight by the Deputy Registrar and That the same should be construed as a valid reason occasioning the delay in serving the Notice of Appeal on time.
7. Turning to prejudice, the Court was implored to balance the competing interests of the parties That is, the injustice to the appellant in denying him an extension of time against the prejudice to the respondents in granting an extension and That further, the appellant had demonstrated his willingness to prosecute the intended appeal by lodging the Notice of Appeal within the timelines stipulated by the rules and by serving the same expeditiously as soon he received a stamped copy of the same.
8. On the other hand, it was submitted for the respondent That the impugned ruling was delivered on 12<sup>th</sup> February 2024 and the instant motion was not filed until 17<sup>th</sup> July 2024, which was over 5<sup>1/2</sup> months later without any demonstration of promptness or diligence on part of the applicant.
9. It was thus submitted That the applicant had failed to explain why no Notice of Appeal was filed and served within the mandatory 14 days period and That this inordinate and unexplained delay was fatal to the application.
10. Turning to prejudice, it was submitted That if the instant motion was allowed, the same could irreparably prejudice the respondent as the final arbitral award remains unsatisfied despite the lapse of mandatory compliance timelines and That the applicant continues to unlawfully retain possession of the suit property without payment of rent.
11. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the replying affidavit, the respective parties' submissions, the cited authorities and the law.
12. The principles upon which this Court exercises its discretion pursuant to Rule 4 to extend time or not have now taken a well beaten path. The Court has wide and unfettered discretion in deciding whether to extend time or not. However, in exercising its discretion, the Court should do so judiciously.
13. See *Mwangi v Kenya Airways Limited* [2003] KLR 486 where this Court stated thus:

“Over the years, the Court has set out guidelines on what a single Judge should consider when dealing with an application for extension of time under Rule 4 of the Rules. For instance, in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* (Civil Application No. Nai 255 of 1997 (unreported), the Court expressed itself thus;

“It is now well settled That the decision whether or not to extend 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.”

12. In the instant case and as regards the length of the delay, the impugned ruling was delivered on 12<sup>th</sup> February 2024 and the applicant filed a Notice of Appeal on 14<sup>th</sup> February 2024, which was well within time. The Notice of Appeal was however not served upon the respondent until 16<sup>th</sup> July 2024, a period of about 5 months which delay is certainly inordinate.
13. Turning to reasons proffered for the delay, it was contended by the applicant the same was due to lethargy by the Registry and failure by the Deputy Registrar to avail a signed stamped copy of the Notice of Appeal.
14. I have looked at the record and I note That indeed the applicant filed a Notice of Appeal on 14<sup>th</sup> February 2024 and paid for the same on the same day which was well within time.
15. Further, vide a letter dated 14<sup>th</sup> February 2024, the applicant’s advocates wrote to the Deputy Registrar requesting for certified copies of the judgment and proceedings for purposes of lodging an appeal.
16. Again, on 14<sup>th</sup> July 2024, the applicant’s advocates wrote to the Deputy Registrar stating inter alia That they had visited the Registry on 11<sup>th</sup> and 12<sup>th</sup> July 2024 and established That the Notice of Appeal was not in the file and That the same had not been uploaded in the Judiciary portal. They further requested expedition of the process to enable them effect service on the respondent.
17. It was not until 16<sup>th</sup> July 2024, That the registry availed the requested documents and the applicant proceeded to promptly file the instant motion on 17<sup>th</sup> July 2024, a day later.
18. Given the circumstances, I consider the reasons given for the delay to be reasonable/plausible and ultimately therefore, I am of the considered opinion That the delay herein has been sufficiently explained to the satisfaction of this Court.
19. As to the arguability or otherwise of the intended appeal, the Court has noted the averments contained in the respondent’s replying affidavit where they contend inter alia That the instant application is an abuse of the court process and further accuse the applicant of filing multiplicity of applications and suits.
20. Be That as it may, the issues raised by the respondent are not for consideration in a motion such as this one.
21. Additionally, it would not be in my place to determine the arguability or otherwise of the intended appeal sitting as a single Judge and I will therefore make no further comment on this issue.
22. Finally on prejudice, I am satisfied That the applicant would be prejudiced if the instant motion is not allowed as he will have been shut out from the seat of justice. On the contrary, if the motion is allowed, both parties will have their day in Court and they shall get an opportunity to canvass their respective positions.
23. The totality of my findings therefore is That the applicant has demonstrated and satisfied the existence of the principles for consideration in the exercise of my unfettered discretion pursuant to Rule 4 of this Court to extend time.
24. Accordingly, the applicants’ motion dated 17<sup>th</sup> July 2024, is merited and the same is hereby allowed as prayed.



25. The Notice of Appeal filed on 14<sup>th</sup> February, 2024 and served upon the respondent on 16<sup>th</sup> July, 2024 is deemed to have been properly served.
26. The applicant shall proceed to file the intended appeal within 30 days from the date of this ruling failure to which, these orders shall stand vacated.
27. The costs of this motion shall abide the outcome of the intended appeal.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF JUNE, 2025.**

**F. SICHALE**

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

