



REPUBLIC OF KENYA



**Mahugu v Equity Bank Limited (Civil Application
E472 of 2024) [2025] KECA 1218 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1218 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E472 OF 2024**

F SICHALE, JA

JULY 4, 2025

BETWEEN

JAMES MURAYA MAHUGU APPLICANT

AND

EQUITY BANK LIMITED RESPONDENT

*(Being an Application for Extension of Time to file Notice and Record of
Appeal out of time against the Judgment of the Environment and Land Court
(S. Okongo J), dated 4th October 2021 in (Milimani ELCA No. 50 of 2015)*

RULING

1. By the motion on notice dated 19th July 2024, James Muraya Mahugu (“the applicant” herein), has sought the following orders;
 - “i. That the Honourable Court do extend the time limited for filing and service of the Notice of Appeal against the judgment of the Honourable Mr. Justice S. Okongo delivered on 04/10/2021 in Nairobi ELCA No. 50 of 2015.
 - ii. That costs of this application be provided for”
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 aggrieved with the judgment delivered by the Environment and Land Court (S. Okongo J), on 4th October 2021 in Milimani ELCA No. 50 of 2015, he had preferred an appeal against the same vide a Notice of Appeal lodged in Court on 15th October 2021.
3. That immediately thereafter, his advocates informed him that the respondent was desirous of having an amicable settlement and they were referred to the Director of Legal Services of the respondent one John Njenga.



4. He further deposed that subsequently thereafter, the respondent failed to initiate the settlement by which time the period for filing the appeal lapsed, hence the instant application.
5. That, he had an arguable appeal and the respondent would not suffer any prejudice if the instant motion was allowed.
6. There was no response on part of the respondent despite having been served with a copy of the application on 28th October 2024.
7. It was submitted for the applicant that the application was not unduly delayed as the applicant filed Notice of Appeal timeously, i.e. on 15th October 2021 and served the same on the respondent and subsequently applied for certified copies of proceedings and judgment.
8. It was further submitted that the reasons for the delay had been clearly explained namely; that upon filing the Notice of Appeal, the respondent had approached the applicant with a view to settle the matter and that there was a legitimate expectation that the matter would be settled by the respondent, until it became apparent and clear that the respondent had become non-committal along the way.
9. On prejudice, it was submitted that the respondent would not be prejudiced in any way as they had expressed interest to settle the matter which negotiations did not bear any fruits.
10. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the applicant's submissions, the cited authorities and the law.
11. Before I make a determination on the merits or otherwise of the instant application, I note that the Rule (s) under which the same is premised has not been stated. Be that as it may, by dint of the provisions of Article 159 (2) (d) of *the Constitution* of Kenya (2010), Courts are obliged to administer justice without undue regard to procedural technicalities. Consequently, I am inclined to overlook this omission.
12. Having said that, the principles upon which this Court exercises its discretion pursuant to Rule 4 to extend time or not are now old hat. 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 vs. 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.”
11. In the instant case and as regards the length of the delay, the impugned judgment was delivered on 4th October 2021 and the applicant timeously filed a Notice of Appeal on 15th October 2021. There has therefore been no inordinate delay.
11. Turning to reasons proffered for failing to file the appeal on time, it was contended by the applicant that immediately after the judgment was delivered, the respondent's Executive Director informed his



advocates that they would reach a settlement but the respondent eventually became non-committal by which time the period for filing the appeal had lapsed, a fact that the respondent has not denied.

12. I have also looked at the annexures attached to the motion where the respondent had offered to settle the matter. 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.
13. As to the arguability or otherwise of the intended appeal, it would not be in my place to make a determination on the same sitting as a Single Judge and I will therefore not delve into this issue.
14. Finally on prejudice, I am satisfied that the respondent will not suffer any prejudice if the instant application is allowed as they did not even respond to the motion despite having been served with the same on 28th October 2024.
11. Taking into totality all the circumstances of this case, I am of the considered view 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.
12. Accordingly, the applicant's motion dated 19th July 2024, is merited and the same is hereby allowed as prayed.
13. The applicant shall proceed to file the appeal within a period of 30 days from the date of this ruling failure to which these orders shall stand vacated.
14. The costs of this motion shall abide the outcome of the intended appeal.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF JULY, 2025.

F. SICHALE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

