



**Gandhi v UBA Kenya Bank Limited (Civil Application E129 of 2022)
[2022] KECA 1215 (KLR) (4 November 2022) (Ruling)**

Neutral citation: [2022] KECA 1215 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E129 OF 2022
F SICHALE, JA
NOVEMBER 4, 2022**

BETWEEN

SATYA BHAMA GANDHI APPLICANT

AND

UBA KENYA BANK LIMITED RESPONDENT

*(Being an Application for Leave to Appeal from the Judgment of
the High Court of Kenya at Milimani Commercial & Tax Division
(Majanja J), dated 3rd February 2020.) IN (Civil Suit No. 171 of 2014.)*

RULING

1. The application before me sitting as a Single Judge is a motion dated 20th April 2022, predicated upon Section 3, 3A, and 72 (1) (c) of the *Civil Procedure Act*, 2010, Rule (1) (2), Rule 39 (b), 41, 42 (1), 43 (1), 43 (3) (a), 47 and 82 (1) of the *Court of Appeal Rules 2010* and Article 159 (2) (d) of *the Constitution* of Kenya 2010 and all other enabling provisions of the law, in which Satya Bhamu Gandhi (the applicant herein), seeks leave to file an appeal out of time against the judgment of Majanja J dated February 3, 2020.
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 of Majanja J, dated February 3, 2020, she had filled a Notice of Appeal against the same dated February 17, 2020 and subsequently wrote two letters to the Deputy Registrar on 26th February and March 4, 2020, seeking to be supplied with certified copies of the judgment, decree and typed proceedings for the purposes of filing an appeal.
3. That on December 10, 2020, she filled an application before this Court seeking a stay of execution of the said judgment and *vide* a ruling delivered on March 19, 2021, the Court granted a conditional stay of execution and further granted her 30 days to file and serve the intended appeal.



4. That, subsequent thereafter, she made frantic efforts to abide by the said Court orders by writing to the Deputy Registrar of the Court on March 25, 2021 requesting for certified copies of the judgment and proceedings for purposes of filing an appeal but the same elicited no response.
5. She further deposed that on February 9, 2022, she again wrote to the Deputy Registrar following up on her request for certified copies of the proceedings and it was only on April 7, 2022, that she received a notification from the Court that the same were ready for collection. She thus contended that the delay in filing the appeal was due to factors beyond her control.
6. There was no response on part of the respondent.
7. The applicant in her submissions basically reiterated the contents of the supporting affidavit and submitted inter alia that the reasons she had given for the delay demonstrate that there was no negligence, inaction and/or want of *bonafides* on her part to necessitate the delay in filing the appeal as directed by the Court but due to circumstances beyond her control.
8. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the applicant's submissions, the cited authorities and the law.
9. The principles upon which this Court exercises its discretion under Rule 4 are firmly settled. The Court has wide and unfettered discretion in deciding whether to extend time or decline the same. However, in exercising its discretion the Court should do so judiciously. See [*Fakir Mohamed v. Joseph Mugambi & 2 others*](#) C.A. No. Nai. 332 of 2004 where the Court laid out some of the considerations to be taken into account by the Court in deciding applications of these nature as follows; the length of the delay, the reasons for the delay, the possibility of the appeal succeeding and prejudice to be occasioned to the parties.
11. In the instant case, and as regards the length of the delay, the impugned judgment was delivered on February 3, 2020, whereupon the applicant filed a Notice of Appeal dated February 17, 2020. Subsequent thereafter, this Court Karanja, Okwengu and Musinga JJ. A, *vide* a ruling dated 19th March 2021, directed the applicant to file and serve the appeal within 30 days.
12. The record herein however clearly shows that that the proceedings were not ready until April 7, 2022 and there is a Certificate of Delay towards this respect. On the other hand, the instant application is dated April 20, 2022. There has been a delay 13 days from the date when the proceedings were ready i.e. April 7, 2022 to April 20, 2022 when the instant application was filed, which delay I do not consider to be inordinate/unreasonable.
13. Regarding reasons for the delay, I have looked at the Certificate of Delay, the various correspondences by the applicant to the Deputy Registrar requesting for proceedings and copies of medical notes and letters from the applicant's doctor and I am satisfied that the delay herein has been explained to the satisfaction of this Court and I find the reasons given for the delay to be plausible. With regard to the possibility of the appeal succeeding, I have looked at the annexed draft Memorandum of Appeal and I am satisfied that the applicant has an arguable appeal worthy of consideration by the Court. Of course I am alive to the fact that I cannot say more regarding this issue lest I embarrass the bench that will be eventually seized of the appeal.
14. As regards prejudice, the respondent has already commenced execution proceedings against the applicant by *inter alia* issuing Notices to Show Cause as to why the applicant should not be committed to civil jail and I am satisfied that it has been demonstrated to the satisfaction of this Court that the applicant will suffer great prejudice if the instant application is not allowed.



15. Given the circumstances, I find 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 to file an appeal out of time.
16. Accordingly, the applicant's motion dated April 20, 2022 is meritorious and the same is hereby allowed in terms of prayer 2.
17. The applicant is hereby granted leave to file her appeal out of time against the judgment of Majanja J dated February 3, 2020, within 30 days from the date of this ruling failure to which these orders shall stand vacated.
18. The costs of this motion shall abide the outcome of the intended appeal. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF NOVEMBER, 2022.

F. SICHALE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

