



**National Bank of Kenya Limited v Mohamud (Civil Application  
E190 of 2021) [2021] KECA 32 (KLR) (23 September 2021) (Ruling)**

Neutral citation: [2021] KECA 32 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E190 OF 2021  
DK MUSINGA, JA  
SEPTEMBER 23, 2021**

**BETWEEN**

**NATIONAL BANK OF KENYA LIMITED ..... APPLICANT**

**AND**

**SIYAD MADEY MOHAMUD ..... RESPONDENT**

*(Being an appeal against the whole of the Ruling of the Employment and Labour Relations Court (Rika, J.) delivered on 11th February, 2021 in E.L.R.C Cause No. 56 of 2020.)*

**RULING**

1. The applicant's notice of motion brought under rules 4, 5(2)(b), 42, 47 and 75 of this Court's Rules seeks stay of enforcement of the ruling delivered in Employment and Labour Relations Court in ELRC Cause NO. 56 of 2020 pending the hearing and determination of an intended appeal. The applicant also seeks extension of time to file an intended appeal from the said judgment.
2. The application is supported by an affidavit sworn by Stephine Obongo, the Head of Commercial Transaction and Litigation of the applicant, who states, inter alia, that the ruling by the ERLC was delivered by Rika, J. on 11th February 2021; that their advocates advised the applicant of the said ruling on 15th February 2021; that on 13th April 2021, the respondent's advocates served the applicant with a copy of the order issued on 11th February 2021 together with a copy of the impugned ruling.
3. The applicant further states that on 14th April 2021 an application for certified copies of the proceedings and ruling was made because the applicant felt aggrieved by the ruling and intended to prefer an appeal against it. The applicant therefore seeks extension of time to lodge the intended appeal.
4. The respondent opposes the application and states, inter alia, that the application is unmeritorious as no reason for the delay has been advanced by the applicant to warrant grant of the order sought.



5. The prayer for stay of execution of the trial court's ruling can only be heard by a full bench and not by a single judge of this Court. I will therefore not deal with it.
6. Regarding the prayer for extension of time, under rule 4 of this Court's Rules, a single judge has unfettered discretion to extend time, but such discretion must be exercised judiciously.
7. In *Thuïta Mwangi v Kenya Airways Limited* [2003] eKLR, the Court set out the guidelines that a single judge should consider in an application for extension of time. They include the length of the delay, the reason for the delay, possibly the chances of success of the intended appeal and the degree of prejudice that may be occasioned to the respondent if the application is granted.
8. The impugned ruling was delivered on 11th February 2021 and this application for extension of time was filed on 4th June 2021, almost 5 months after the delivery of the ruling. The applicant has not advanced any reason for that delay.
9. I must point out that extension of time is not a right of a party but a discretionary remedy that is only available to a deserving party who has discharged the burden of laying a basis to the satisfaction of the Court that the court should exercise its discretion and extend time in the applicant's favour.
10. Under rule 75 of this Court's Rules, a party who desires to appeal to this Court should lodge a notice of appeal within 14 days of the date of the decision against which it is desired to appeal. No such notice was filed. Under rule 82(1), an appeal should be instituted within 60 days of the date when the notice of appeal was lodged and that was not done.
11. The applicant has not advanced any reason for the inordinate delay in filing the application for extension of time. In the absence of such an explanation, I have no basis of exercising the discretion under rule 4 of this Court's Rules. Consequently, I find this application wanting in merit and dismiss it with costs to the respondent.

**DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF SEPTEMBER, 2021.**

**D. K. MUSINGA, (P)**

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**JUDGE OF APPEAL**

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

Signed

DEPUTY REGISTRAR

