



**Feast Foods Processors Limited v Kenya Development Corporation Limited & another
(Civil Application E248 of 2025) [2025] KECA 2263 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2263 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E248 OF 2025
F SICHALE, JA
DECEMBER 19, 2025**

BETWEEN

FEAST FOODS PROCESSORS LIMITED APPLICANT

AND

KENYA DEVELOPMENT CORPORATION LIMITED 1ST RESPONDENT

STARTRUCK AUCTIONEERS LIMITED 2ND 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 (F. Mugambi J), dated 14th February 2025 in (Milimani High Court Commercial & Tax Division Case No. E438 of 2024))

RULING

1. By the motion on notice dated 7th April 2025, brought pursuant to the provisions of Rule 4 and 43 of the Court of Appeal Rules 2022, Feast Foods Processors Limited (“the applicant” herein), has invoked the jurisdiction of this Court sitting as a Single Judge seeking the following orders;
 - “i. Spent.
 - ii. That the Honourable Court be pleased and do hereby extend the period for filing of the Notice of Appeal under Rule 77 of the Court of Appeal Rules, 2022 and/or deem the Notice of Appeal dated 27th March 2025 and filed in Nairobi High Court COMM Civil Suit No. E438 of 2024 as duly filed pending the hearing and determination of this application.
 - iii. That the Honourable Court be pleased and do hereby extend the period for filing the Notice of Appeal under Rule 77 of the Court of Appeal Rules, 2022 and/or deem the Notice of Appeal dated 27th March 2025 and fled in Nairobi



High Court Comm Civil Suit No. E438 of 2024 as duly filed pending the hearing and determination of the intended appeal.

iv. That the costs of and incidental to this application be in the cause.”

2. The motion is supported on the grounds on the face of the motion, and an affidavit sworn by Mwangi Wamae, a Director of the applicant, who deposed inter alia that vide the ruling dated 14th February 2025, the Honourable Court dismissed their application for injunction dated 6th August 2024, hence exposing the suit properties to the risk of being auctioned.
3. That, the applicant’s then advocate on record Messrs Abdullahi Gitari & Odhiambo Advocates LL.P, advised them not to appeal against the ruling, but instead cordially engage the 1st respondent for an amicable settlement and that the auctioneers (the 2nd respondent), had issued them with a 45 days notification of sale notice dated 5th March 2025, informing them that a public auction was scheduled for 14th May 2025.
4. He further deposed that they had sought a second opinion from their current advocates, who advised them to file an appeal since the 1st respondent was not negotiating in good faith and was constantly blackmailing them with an auction.
5. That unfortunately, the applicant was already late to file a Notice of Appeal which it ought to have filed within 14 days (i.e. on or before 28th February 2025), and it was trite law that mistake of an advocate should not be visited upon an innocent litigant and that the delay of 27 days required to file the Notice of Appeal was not inordinate.
6. The motion was opposed vide a replying affidavit sworn on 22nd April 2025, by Erastus Njoroge Kaiba, the Deputy Director Portfolio Management, of the 1st respondent who deposed inter alia that, when the matter came up before the superior court on 14th February 2025, the applicant informed the court that it was ready to proceed with the main suit and requested for directions on filing of pleadings and that it was now interesting that it was claiming that it wants to challenge the decision of the superior court, dismissing the injunction application.
7. He further deposed that the instant application was a knee jerk reaction to the 1st respondent’s exercise of its statutory power of sale, which the 1st respondent was entitled to and that due to the foregoing reasons, the applicant had failed to demonstrate any sufficient reason to warrant the exercise of the Court’s discretion in its favour.
8. It was further deposed that the applicant had not demonstrated any effort it had made to reach out to the 1st respondent and that therefore, to allege that the 1st respondent was negotiating in bad faith was a statement meant to deceive and gain sympathy from the Court.
9. The applicant in its submissions basically reiterated the averments in the supporting affidavit to the motion and submitted that failure to file the appeal on time was due to the fact that its former advocate had advised them not to appeal against the impugned decision, but rather to negotiate with the 1st respondent but when they sought a second opinion from their current advocates, they were advised to appeal by which time the period of filing the appeal had lapsed.
10. On the other hand, it was submitted for the respondent that the applicant had failed to establish any sufficient reason for the exercise of the Court’s discretion and that it was not enough for a party to simply blame an advocate for all manner of transgressions in the conduct of litigation.



11. Finally on prejudice, it was submitted that the 1st respondent would suffer prejudice as it would be forced to expend additional finances and resources to defend itself in a matter where the applicant had clearly demonstrated its inability and unwillingness to repay amounts already due and owing from it.
12. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the replying affidavit, the rival submissions by the parties, the cited authorities and the law.
13. 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.
14. See Patel vs. Waweru & 2 Others [2003] KLR 361 at pp. 362-3 where this Court had the following to say in respect to Rule 4 of the Court of Appeal Rules:

“This is a matter in which the learned single Judge was called upon to exercise his unfettered discretion under rule 4 of the Rules of this Court. All that the applicant was required to do was to place sufficient material before the learned single Judge explaining the reason for what was clearly an inordinate delay. How does a single Judge exercise his discretion” In *Leo Sila Mutiso V. Rose Hellen Wangari Mwangi – Civil Application no. NAI. 251 of 1997* this Court stated:-

“It is now settled that the decision whether or not to extend the 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”

15. In the instant case and as regards the length of the delay, the impugned ruling was delivered on 14th February 2025, whereas the instant motion was filed on 7th April 2025. There has therefore been a delay of about 1 month and 24 days which I do not consider to be inordinate.
16. Turning to reasons proffered for failing to file the appeal on time, it was contended by the applicant that the same was due to the fact that upon delivery of the ruling, their former advocates advised them not to appeal but rather to engage with negotiations with the 1st respondent for an amicable settlement, but upon seeking a second opinion from their current advocates, they were advised to appeal since the 1st respondent was constantly blackmailing them with threats of auction, by which time the period for lodging an appeal had lapsed and that as such they should not be blamed for mistakes of their counsel.
17. Ultimately therefore, I consider the reasons given for failing to file the appeal on time to be plausible/ reasonable since the delay herein is not inordinate and more so, given the fact that it is trite law that mistakes of counsel should not be visited upon an innocent litigant.
18. Given the circumstances, I am of the considered opinion that the delay herein has sufficiently been explained to the satisfaction of this Court.
19. As to the arguability or otherwise of the intended appeal, I cannot make a determination of this issue sitting as a Single Judge and I will therefore make no further comment regarding the same.
20. Finally on prejudice, I am satisfied that the applicant will stand to suffer prejudice if the instant motion is not allowed as it will have completely been ousted from the seat of justice.



21. 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.
22. Accordingly, the applicant's motion dated 7th April 2025, is merited and the same is hereby allowed as prayed.
23. The applicant shall proceed to file the intended appeal within a period of 30 days from the date of this ruling, failure to which these orders shall stand vacated.
24. The costs of this motion shall abide the outcome of the intended appeal.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF DECEMBER 2025.

F. SICHALE

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

