



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Koome; CJ & P; Mwilu; DCJ & VP; Ibrahim, Wanjala, Njoki, Lenaola,
Ouko, SCJJ)

APPLICATION NO. E030 OF 2025

— BETWEEN —

BABUBHAI BHANGWANJI AMBA MADHWANI.....APPLICANT

-AND-

MARIA BURTON.....RESPONDENT

(Being an application for extension of time and leave to file an application for review of the Court of Appeal Ruling in Nairobi Civil Application No. 181 of 2020 delivered on 17th April 2025, dismissing the applicant's application for certification and leave to appeal to the Supreme Court on grounds of general public importance under Article 163(4)(b) of the Constitution)

Representation:

Kounah & Company Advocates for the Applicant

Njeri Onyango & Company Advocates for the Respondent

RULING OF THE COURT

[1] UPON perusing the Notice of Motion dated 1st October 2025 and filed on 7th October 2025, pursuant to Article 163(4)(b) and (5) of the Constitution and Rules 15(2) and 33(2) of the Supreme Court Rules seeking extension of time and leave to file an application for review and setting aside of the Ruling of the Court of Appeal (*Gatembu, Tuiyott & Achode, JJA*) delivered on 17th April 2025 in **Nairobi Civil**

Application No. 181 of 2020, in which the appellate court dismissed the applicant's application for certification of the intended appeal as one raising matters of general public importance; and seeking costs; and

[2] UPON CONSIDERING the applicant's grounds on the face of the application and affidavit sworn by *Babubhai Bhangwanji Amba Madhwani* on 1st October 2025 together with his Further Affidavit sworn on 29th October 2025, wherein it is contended that the Court of Appeal delivered its ruling on 17th April 2025 declining to certify the intended appeal as one raising issues of general public importance; that the statutory period for applying for review before this Court lapsed owing to the failure of the applicant's former advocates to promptly notify the applicant of the said ruling; that upon discovering the lapse, the applicant moved with haste and instructed his current advocates to move this Court for extension of time and leave to file the intended application for review of the Court of Appeal decision; that the delay was not deliberate but was occasioned by factors beyond the applicant's control such as his advanced age and deteriorating health which affected the transition between the two law firms and to execute the formal consent to act; that counsel's mistake should not be visited upon a client; that the intended appeal raises questions that are weighty and go beyond the dispute of the parties; and

[3] UPON CONSIDERING the applicant's submissions dated 1st October 2025 and filed on 7th October 2025, restating the grounds set out above and in addition urging that the application meets guidelines set out in *Salat Vs Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR) and that the application meets the principles for grant of certification established in *Steyn Vs Ruscone* [2013] KESC 11 (KLR); that the intended appeal raises live contradictions in the Kenyan jurisprudence that affect thousands of cohabitation arrangements; more particularly whether resulting trusts flow strictly from contribution as established in *Twalib Hatayan & another Vs Said Saggah Ahmed Al-Heidy & 5 others* [2015] KECA 713 (KLR); whether presumption of

advancement, historically confined to marriage, can extend to cohabitation even though ***JOO Vs MBO; Federation of Women Lawyers (FIDA Kenya) & another (Amicus Curiae)*** [2023] KESC 4 (KLR) affirms that contribution only governs entitlement in lawful marriages; whether joint tenancy must yield to contribution to avoid unjust enrichment and protect contributors and beneficiaries of a deceased person upon demise; and lastly whether disputes between cohabitees should be adjudicated upon as between “strangers” as established in ***MNK Vs POM; Initiative for Strategic Litigation in Africa (ISLA) (Amicus Curiae)*** [2023] KESC 2 (KLR) or under matrimonial presumptions; and

[4] **HAVING CONSIDERED** the respondents’ replying affidavit sworn by *Maria Burton* on 15th October 2025 and filed on 13th November 2025 and submissions dated and filed on even date, to the effect that the applicant has not tendered any credible documentary proof from his former advocates to substantiate the allegation that they had failed to inform him about the ruling or explain what efforts he personally made to find out about the outcome of the case; that rules of procedure are meant to be obeyed and cannot be casually set aside on the mere claim of counsel’s omission as was held in ***Habo Agencies Limited Vs Wilfred Odhiambo Musingo*** [2015] KECA 597 (KLR); that the applicant had before the Court of Appeal also filed an application for certification to the Supreme Court out of time, giving the same explanation and the Court of Appeal indulged him despite the delay; that the applicant has neither stated nor demonstrated when he first became aware of the ruling of the Court of Appeal; that a litigant must also demonstrate diligence in the conduct of their case; that Rule 33(2) of the Supreme Court Rules provides that an application for review of certification be made within fourteen (14) days unless there is a sufficient reason; that power to extend time under Rule 15(2) of the Supreme Court Rules 2020 is discretionary and the instant application falls short of the principles set out in ***Salat Vs Independent Electoral and Boundaries Commission & 7 others*** [2014] KESC 12 (KLR); that allowing this application would defeat the principle of finality of litigation and legal certainty; that the inquiry at this stage is confined solely to whether the delay

has been satisfactorily explained, not the merits of the underlying dispute as argued by the applicant in their submissions; that an application for enlargement of time must be determined strictly within the procedural framework, and that novelty or potential significance of the intended appeal does not cure a breach of timelines as was held **County Executive of Kisumu Vs County Government of Kisumu & 8 others** [2017] KESC 16 (KLR); and

[5] COGNISANT OF THE FACT that this Court has already established the guiding principles for extension of time in **Salat** (*supra*), to the effect that:

- a) *Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;*
- b) *a party seeking extension of time has the burden of laying a basis to the satisfaction of the court;*
- c) *Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;*
- d) *Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;*
- e) *Whether there will be any prejudice suffered by the respondents if the extension is granted;*
- f) *Whether the application has been brought without undue delay; and*
- g) *Whether in certain cases, like election petitions, public interest should be a consideration for extending time.*

[6] WE NOW OPINE as follows:

- i. The Court of Appeal delivered its Ruling dismissing the applicant's Notice of Motion seeking certification on 17th April 2025. Pursuant to Rule 33(2) of the Supreme Court Rules 2020, an aggrieved party may apply to this Court for review within fourteen (14) days. Computing time from the date of the

dismissal, the applicant ought to have filed his application on or before 2nd May 2025.

- ii. But the applicant filed the instant application on the e-filing platform on 3rd October 2025 under Application No. E030 of 2025 and thereafter filed the physical copies on 7th October 2025, which was almost six (6) months after the statutory timeline had lapsed.
- iii. Applying the principles on extension of time set out in the ***Salat case*** (*supra*), we note that the applicant has attributed the delay to his erstwhile counsel for failing to inform him of the ruling of the Court of Appeal. The applicant avers that the delay was further occasioned by his advanced age and deteriorating health, but provides no proof.
- iv. Whereas mistakes of counsel ought not to be visited upon a litigant as we held in ***Waruhiu Vs Munene & another*** [2021] KESC 42 (KLR) and ***Gaciani & 11 others Vs Kimanga & another*** [2023] KESC 23 (KLR), there must be cogent and credible evidence that the applicant made some effort or acted diligently in the circumstances, by providing evidence of steps taken. It is not enough for a party to simply blame the former advocate for all manner of transgressions. As we held in ***Karinga Gaciani Case***, “Courts have always emphasized that parties have a responsibility to show interest in and to follow up on their cases even when they are represented by counsel, and it does not matter whether the party is literate or not.”
- v. It is therefore our view that the delay in filing this application is inordinate and has not been satisfactorily explained. Furthermore, it has long been established that an application for enlargement of time must be determined strictly within the procedural framework, and that novelty or potential significance of the intended appeal does not cure a breach of timelines.

[7] CONSEQUENTLY, and for reasons aforesaid, we make the following **ORDERS**:

a) The Notice of Motion dated 1st October 2025 and filed on 7th October 2025 is hereby dismissed.

b) The applicant shall bear the cost of this application.

It is so Ordered.

DATED and DELIVERED at NAIROBI this 11th Day of December 2025.

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M.K. KOOME
CHIEF JUSTICE & PRESIDENT
OF THE SUPREME COURT

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P.M. MWILU
DEPUTY CHIEF JUSTICE & VICE PRESIDENT
OF THE SUPREME COURT

.....
M.K. IBRAHIM
JUSTICE OF THE SUPREME COURT

.....
S.C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

.....
W. OUKO
JUSTICE OF THE SUPREME COURT

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

REGISTRAR
SUPREME COURT OF KENYA