



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

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

APPLICATION NO. E025 OF 2025

— BETWEEN —

PETERKEEN MWIU KIMWELI & 46 OTHERSAPPLICANTS

—AND—

NATIONAL SOCIAL SECURITY FUNDRESPONDENT

(Being an application for extension of time to review the Court of Appeal denial of certification and leave to appeal to the Supreme Court under Article 163(4)(b) of the Constitution.)

Representation:

Mr. Museve for the Applicants

(Guserwa & Company Advocates)

Ms. Obiayo h/b for Mr. Ouma for the Respondent

(Federation of Kenya Employers)

RULING OF THE COURT

[1] UPON PERUSING the Notice of Motion dated 11th August 2025 and filed on 13th August 2025 under Sections 3, 3A, 21(2), 23(2A)(b) of the Supreme Court Act, 2011 and Rule 15(2) of the Supreme Court Rules, 2020, *seeking leave to file an originating motion to review the ruling of the Court of Appeal (Ochieng, Gachoka, & Korir, JJ. A), in Civil Application (Sup) No. E002 of 2023, denying certification to appeal to the Supreme Court; and costs; and*

[2] UPON CONSIDERING the applicant's grounds on the face of the application and the supporting affidavit sworn by *Peterkeen Mwiu Kimweli* on 11th August 2025, wherein it is contended that the ruling denying certification was delivered on 23rd February 2024 and the applicants filed a notice of appeal on 8th March 2024; but were not able to move this Court under Article 163(4)(b) within the timeline prescribed by Rule 33(2) of the Court's Rules because despite applying for certified proceedings on 7th March 2024, the same were only availed by the Court of Appeal on 9th July 2025; the delay is not inordinate and has been explained; the intended appeal raises matters of general public interest, particularly the protection of the right to lawful expectation and protection against discrimination; if leave is not granted, the applicants will be greatly prejudiced; and it is fair and in the interest of justice to grant the leave; and

[3] UPON FURTHER CONSIDERATION of the applicant's submissions dated 11th August 2025, restating the grounds set out above and urging that the application meets the principles for extension of time under Section 15 (2) of the Supreme Court Rules. The applicants rely on *Katiba Institute Vs Attorney General & 9 others* (Petition 17 of 2020) [2023] KESC 47 (KLR); and *Arvind Shah & 7 others Vs Mombasa Bricks & Tiles Limited*, SC Application No. 3 (E008) of 2022 to support their case for extension of time. They further submit that the appeal is arguable, as it challenges the Court of Appeal's finding on the applicable employment terms and conditions, which, they argue, denied them their accrued benefits. The applicants also urge that they are desirous of prosecuting the

intended appeal, and that the delay has been satisfactorily explained and is excusable; and

[4] FURTHER NOTING the respondent's replying affidavit sworn by *Kellen Njue* on 21st August 2025 and submissions of even date, to the effect that the applicants have not satisfied the principles for extension of time settled in ***Nicholas Kiptoo Arap Korir Salat Vs Independent Electoral & Boundaries Commission & 7 others***, SC (App) No. 16 of 2014; [2014] **KESC 12 (KLR)** ; particularly that the applicants waited for eighteen months after the lapse of the timeline set out under Rule 33(3) of the Court's Rules before filing the instant application; the applicants are indolent and have failed to demonstrate any arguable case; they are merely seeking to reopen a matter conclusively determined by the Court of Appeal; the application is frivolous and an abuse of the court process; and in any event, the issues raised before the Court of Appeal, the subject of the impugned ruling, do not raise any constitutional questions or matters of general public importance; and

[5] APPRECIATING that this Court, by virtue of Rule 15(2) of the Supreme Court Rules, 2020 has discretionary powers to extend the time limited by its Rules or any of its decisions and that an applicant seeking extension of time must satisfy the guiding principles set out in ***Nicholas Kiptoo Arap Korir Salat Vs Independent Electoral & Boundaries Commission & 7 others*** (*Supra*) among other authorities on what a Court should consider in exercise of such discretion, and which we restate as follows:

- i. *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;*
- ii. *A party that seeks for extension of time has the burden of laying a basis to the satisfaction of the court;*
- iii. *Whether the court should exercise the discretion to extend time is a consideration to be made on a case-by-case basis;*

- iv. *Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;*
- v. *Whether there will be any prejudice suffered by the respondents if the extension is granted;*
- vi. *Whether the application has been brought without undue delay; and*
- vii. *Whether, in certain cases, like election petitions, public interest should be a consideration for extending the time.; and*

[6] **NOTING** that the Court further opined in ***County Executive of Kisumu Vs County Government of Kisumu & 8 others*** (Civil Application 3 of 2016) [2017] KESC 16 (KLR) as follows:

“However, we hasten to add that a ground of delay in getting typed proceedings is not a prima facie panacea for a case of delay whenever it is pleaded. Each case has to be determined on its own merit and all relevant circumstances considered. It is worth reiterating that in considering whether or not to extend time, the whole period of delay should be stated and explained to the satisfaction of the court.”

[7] **FURTHER APPRECIATING** that under Rule 33 (2) of the Supreme Court Rules, 2020, where the Court of Appeal has certified or has declined to certify a matter as one of general public importance, an aggrieved party may apply to the Court for review, within fourteen days, **WE NOW OPINE** as follows:

- i. The applicants applied to the Court of Appeal for typed proceedings on 7th March 2024, and the appellate court furnished the same on 9th July 2025.
- ii. Even if this may explain the delay within the set time frame, the applicants took an additional 33 days to file the instant application. This period of delay was neither explained nor were any extenuating circumstances presented so as to trigger the Court’s exercise of its discretion in favour of the applicants;

iii. In any event, the applicants applied for the typed proceedings on 7th March 2024 and did not follow up with the Court of Appeal to expedite their request.

iv. The upshot is that we are inclined to disallow the application for extension of time.

[8] ACCORDINGLY, we make the following orders:

(i) The Motion dated 11th August 2025 and filed on 13th August 2025 is hereby dismissed.

(ii) The costs of this application shall be borne by the applicants.

It is so ordered.

DATED and DELIVERED at NAIROBI this 23rd Day of January, 2026.

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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

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S. C. WANJALA

JUSTICE OF THE SUPREME COURT

.....
NJOKI NDUNGU

JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA

JUSTICE OF THE SUPREME COURT

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

REGISTRAR,
SUPREME COURT OF KENYA

