



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

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

APPLICATION NO. E007 OF 2025

– BETWEEN –

PARLIAMENTARY SERVICE COMMISSION1ST APPLICANT
THE CLERK OF THE SENATE.....2ND APPLICANT
THE CLERK OF THE NATIONAL ASSEMBLY.....3RD APPLICANT
PARLIAMENT.....4TH APPLICANT
MEMBERS OF PARLIAMENT.....5TH APPLICANT

-AND-

SALARIES AND REMUNERATION COMMISSION1ST RESPONDENT
OKIYA OMTATAH OKOITI..... 2ND RESPONDENT
THE CONTROLLER OF BUDGET.....3RD RESPONDENT
THE CABINET SECRETARY OF NATIONAL
TREASURY.....4TH RESPONDENT
HON. ATTORNEY GENERAL.....5TH RESPONDENT
TRANSPARENCY INTERNATIONAL KENYA.....6TH RESPONDENT
KATIBA INSTITUTE.....7TH RESPONDENT
LAW SOCIETY OF KENYA.....8TH RESPONDENT

(Being an application for extension of time to file and serve a Notice of Appeal against the Judgment of the Court of Appeal sitting in Nairobi (Gatembu, Tuiyott & Lesiit JJ. A) dated 21st February 2025 in Civil Appeal No. E017 of 2021)

Representation:

Prof. Tom Ojienda for the Applicants

(Prof. Tom Ojienda & Associates Advocates)

Peter Wanyama for the 1st Respondent

(Wanyama Manyonge & Associates LLP)

RULING OF THE COURT

[1] UPON PERUSING the Notice of Motion Application dated 14th March, 2025 and filed on 23rd April, 2025, by the Applicants under Rule 15 of the Supreme Court Rules 2020 seeking orders that –

1. *Spent*
2. *This Honourable Court be pleased to grant an extension of time to file and serve the Notice of Appeal annexed hereto;*
3. *The Notice of Appeal annexed hereto be deemed to be properly filed upon payment of the requisite fee;*
4. *Costs of this application be in the cause.*

[2] TAKING INTO ACCOUNT the affidavit in support of the Motion by Jeremiah Nyegenye, the Clerk of the Senate of the Republic of Kenya and the Secretary to the Parliamentary Service Commission, together with the written submissions both dated 15th April, 2025 and filed in this Court on 23rd April, 2025, wherein the Applicants admit that there has been delay in filing their Notice of Appeal to herald

an appeal against the judgement of the Court of Appeal in ***Parliamentary Service commission and 4 others Vs Salaries and Remuneration Commission and 7 others; Nairobi Appeal No. E017 of 2021***, rendered on 21st February, 2025. They claim that the delay was occasioned by an internal lapse in completing the modalities on a decision to appeal and seeking approval from relevant officers. The Applicants also claim that they came to a late realization that the superior courts had failed to deal with the constitutional interpretation of Article 127(6)(a) as juxtaposed with Article 230(4), which failure has far-reaching ramification on the future dealings between the 1st Applicant and the 1st Respondent thus invoking this Court's Jurisdiction. It was their further claim that their communication preferring an appeal against the decision of the Court of Appeal was made to their advocate on 11th March, 2025, four days after the time to lodge an appeal had lapsed, and that by the time the application was filed, the Applicants were seven days late in filing the Notice of Appeal. However, they contend that the delay is not inordinate since they have at the earliest opportunity sought leave of this Court to commence the appellate process. They furthermore submit that, whereas they are aware that extension of time is not a right of a party, this court has discretion to excuse the procedural infraction occasioned by the delay. They add that the circumstances of this case are befitting an extension of time, since failure to do so will deny the Applicants an opportunity to address a constitutional question of monumental importance, on the mandate of the 1st Applicant and the 1st Respondent, in determining facilitation and services for the benefit of the 5th Applicant, and that, the intended appeal presents an opportunity for this Court to provide authoritative and impartial interpretation of the constitution.

[3] FURTHER TAKING INTO ACCOUNT their submission that they have preferred this application without undue delay upon determining that an appeal to this Court should be preferred, and that they are within the 30-day period of filing the substantive appeal. They contend in that regard that the respondents do not stand to suffer any prejudice if this Court admits the appeal for hearing. It is their

other contention that the determination of this Court, will in any case provide the much-needed guidance in the finality on constitutional interpretation of the functions of the 1st Applicant and 1st Respondent that were in dispute before the superior courts. Finally, they submit that there exists enormous public interest in this matter since it touches on the remuneration of the representatives of the people of Kenya in the Parliament; and

[4] NOTING THAT in support of its application, the Applicants rely on this Court's decisions in *Nicholas Kiptoo Arap Korir Salat Vs the Independent Electoral and Boundaries Commission & 7 Others*; [2014] eKLR which set out the guiding principles in extension of time applications; the Court of Appeal's decision in *Ibrahim & Another Vs Zumzum Investment Limited & Another*; (2024) KECA 862 (KLR) to affirm that the four day delay in filing the Notice of Appeal was inordinate ; *Styen Vs Ruscone*; (2013) KESC 11 (KLR) where this court set out principles to be considered in determining whether a matter raises issues of general public importance or interest; and *Director of Public Prosecution Vs Okemo & 4 others*; [2022] KESC 33 (KLR) where this Court considered public interest in granting orders the Applicants had sought; and

[5] UPON CONSIDERING the 1st Respondent's grounds of opposition dated 27th May, 2025 and filed on 10th June, 2025, together with the written submissions dated 5th June, 2025 and filed on 10th June, 2025, wherein the 1st Respondent contends that the Applicants' application, has violated the mandatory provisions under Rule 36(1)(a) of the Supreme Court Rules, which requires that a Notice of Appeal must be filed within fourteen days from the date of judgement or ruling against which it is desired to appeal against. The 1st Respondent further contends that the judgment in *Civil Appeal No. E017 of 2021* was delivered on 21st February, 2025 and the Applicants have not justified their failure to act within time. The 1st Respondent further contends that Section 23(2)(b) of the Supreme Court Act 2011, empowers this Court to extend time only upon demonstration of sufficient reason and that, the

Applicants have not discharged the said burden, aside from making vague reference to internal lapses and delayed instructions, which do not amount to sufficient reason that is excusable. It is the 1st Respondent's other position that the Applicant failed to act with the level of diligence and promptitude expected of parties seeking to invoke the appellate jurisdiction of this Court. The 1st Respondent also submits that the Applicants' conduct demonstrated a lack of procedural discipline, contrary to the well-established principles set out by this Court in the case of ***Nicholas Kiptoo Arap Korir Salat Vs the Independent Electoral and Boundaries Commission & 7 Others***; [2014] eKLR. Further, the 1st Respondent asserts that this application offends the principle of finality of litigation, as was affirmed by this court in the case of ***Jasbir Singh Rai & 3 others Vs Tarlochan & 4 others***; (2007) eKLR. The 1st Respondent in addition, asserts that allowing this application will cause prejudice to the Respondents, because it will unjustly reopen closed litigation and delay constitutional compliance in respect of the Court of Appeal's judgment. The 1st Respondent equally asserts that public interest does not override clear procedural lapses, as this court has stated in the past that, even matters of great public concern must comply with the law. Accordingly, the 1st Respondent urges this Court to find that the application is devoid of merit and dismiss the same with costs; and

[6] BEARING IN MIND that the primary issue before us for determination is whether the Applicants have laid a sufficient basis to warrant the exercise of this Court's discretion, to extend the time for filing of a Notice of Appeal pursuant to Rule 15 of the Supreme Court Rules, 2020 and noting the pleadings filed, submissions made and the authorities submitted;

[7] WE NOW OPINE AND DETERMINE as follows:

- i. In the ***Nicholas Salat case (Supra)***, this Court set out the principles to be considered in determining an application for extension of time as follows:

“1. 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;

2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;

3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;

4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;

5. Whether there will be any prejudice suffered by the respondents if the extension is granted;

6. Whether the application has been brought without undue delay; and

7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

- ii. Rule 36(1) of the Supreme Court Rules provides that a person who intends to lodge an appeal to this Court, shall file a Notice of Appeal within fourteen days from the date of the judgment or ruling which is the subject of appeal. In the instant case, the Court of Appeal’s judgment, which is the subject of the intended appeal, was delivered on 21st February, 2025 while the instant application was electronically filed on 14th March, 2025, seven days after the expiry of the fourteen-day statutory window required for one to file a Notice of Appeal. The reasons the Applicants have given for the delay in filing the Notice of Appeal within time, is that, the delay was occasioned by internal lapses in making the decision whether to appeal and as such, instructions to appeal were given on 11th March, 2025, four

days after the expiry of the fourteen-day statutory period. In our view, a seven-day delay in filing this application is not unreasonable nor inordinate, and in any event, the Applicants have given a plausible reason for the delay which has not been seriously contested by the 1st Respondent, aside from claiming that the reasons given are vague, which vagueness has not been demonstrated in any significant manner.

- iii. As to whether the Respondents will suffer prejudice if the extension is granted, the 1st Respondent claims that, granting the extension will be prejudicial to the Respondents as it will unjustly reopen closed litigation. However, under Article 163(4) of the Constitution, this Court has appellate jurisdiction over decisions of the Court of Appeal, and therefore, reopening of concluded proceeding by allowing the Applicant to lodge an Appeal against a decision of the Court of Appeal, cannot be said to amount to any prejudice against the 1st Respondent.
- iv. We are therefore satisfied that the Applicants have demonstrated a reasonable and excusable cause for delay. The application was filed without undue delay and we are not persuaded that the Respondents will suffer any prejudice should the extension be granted.

[8] TAKING INTO ACCOUNT the foregoing and this court's decision in ***Rai & 3 others Vs Rai & 4 others*** [2014] KESC 31 (KLR), we deem it just to order that the costs of the motion shall abide the outcome of the appeal.

[9] CONSEQUENTLY and for the reasons afore-stated, we make the following Orders:

i. The Applicants' Notice of Motion of Motion dated 14th March, 2025 and filed on 23rd April, 2025 is hereby allowed as prayed.

iii. The costs of the application shall be in the cause.

It is so ordered.

DATED and DELIVERED at NAIROBI this 15th day of May 2026.

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

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P.M. MWILU **S.C. WANJALA**
DEPUTY CHIEF JUSTICE & VICE PRESIDENT **JUSTICE OF THE SUPREME COURT**
OF THE SUPREME COURT

.....
NJOKI NDUNGU **I. LENAOLA**
JUSTICE OF THE SUPREME COURT **JUSTICE OF THE SUPREME COURT**

