



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Mwilu; DCJ & VP, Wanjala, Njoki, Lenaola & Ouko, SCJJ)

APPLICATION NO. E038 OF 2025

— BETWEEN —

COUNTY GOVERNMENT OF KAJIADO.....APPLICANT

-AND-

TATA CHEMICALS MAGADI LIMITED.....RESPONDENT

(Being an application for extension of time to file a Notice of Appeal from the Judgment of the Court of Appeal (Gatembu, Ochieng & Muchelule, JJ.A) dated 24th October, 2025 in Civil Appeal No. 530 of 2019)

Representation:

Ms. Minik Larmoi for the Applicant
(Tobiko, Njoroge & Company Advocates)

Ms. Jessica Oliwa for the Respondent
(Oraro & Company Advocates)

RULING OF THE COURT

[1] **UPON CONSIDERING** the Notice of Motion by the applicant dated 4th December 2025 and filed on 5th December 2025 pursuant to Articles 50(1), 159 & 163 of the Constitution, Sections 3, 3A, 11A & 23 (2B) of the Supreme Court Act, Cap 9B, Rules 3, 13, 15, 32 & 36 of the Supreme Court Rules 2020 as well as Rule 12 of the Court of Appeal Rules for orders that this Court be pleased to: extend and/or enlarge time for the applicant to file a Notice of Appeal against the

Judgment of the Court of Appeal in ***Civil Appeal No. 530 of 2019***; find that the Notice of Appeal lodged at the Court of Appeal in Nairobi in ***Civil Appeal No. 530 of 2019*** on 11th November 2025 as duly and properly filed as at the date of determination of this application; grant the applicant thirty (30) days from the date of this decision to file its Petition of Appeal; and that there be no orders as to costs; and

[2] UPON READING the affidavit sworn on 5th December 2025 by Augustine Siamito Sekeiyan, the applicant's County Attorney, together with the submissions dated 19th December 2025, in which the applicant contends that the impugned Court of Appeal judgment declared the Kajiado County Assembly Finance Bills (2013–2018) null and void for contravening Articles 201 and 209(3) and (5) of the Constitution, and for non-compliance with the Rating Act and the Valuation for Rating Act; that this decision aggrieved the applicant; and that the delay in filing the appeal arose from the County's structured governance framework, which necessitated internal consultations among the Office of the County Attorney, the County Executive, and the County Assembly before a decision to appeal could be made. That these consultations coincided with a period of heightened county activity, including the Maa Cultural and Tourism Festival, making it difficult to convene all relevant decision-makers in time; nevertheless, a preliminary resolution was reached and advocates were instructed to file the Notice of Appeal on 11th November 2025, three days out of time, two of which were days falling on a weekend; and the formal decision to proceed with the appeal was subsequently communicated on 26th November 2025; and

[3] NOTING the applicant's submissions that, guided by the principles for extension of time enunciated in ***Salat Vs Independent Electoral and Boundaries Commission & 7 others*** KESC 12 (KLR) (the ***Salat Case***), it has provided a full, frank, and transparent account of the delay; that the County stands to lose approximately Kshs. 17 billion in revenue; and that the County Attorney acted diligently by initiating consultations immediately after delivery of the

judgment, securing initial consensus by 10th November 2025, and instructing advocates the following day, even before formal ratification. The applicant argues that the decision to appeal involved multiple governance organs and could not reasonably be finalized within the statutory 14-day period; that, despite this, it acted promptly in filing the present application; and that it has therefore demonstrated sufficient cause to justify the enlargement of time; and

[4] FURTHER NOTING the applicant's contention that granting the extension will not prejudice the respondent, who was duly served with the Notice of Appeal and responded by filing a Notice of Address for Service, thereby demonstrating awareness of the intended appeal and negating any claim of ambush; and that this position is consistent with the Court's holding in *Ochanda (Suing on his Own Behalf and on Behalf of 996 Former Employees of Telkom Kenya Limited) Vs Telkom Kenya Limited* (Motion 24 of 2014) [2014] KESC 7 (KLR). Finally, the applicant emphasizes that the intended appeal raises issues of significant public importance, particularly concerning the scope of county governments' power to impose rates under Article 209 of the Constitution, the limits of that power, and the interplay with principles of public finance and public participation; that these issues have far-reaching implications for county taxation policy; and that the matter carries substantial public interest, especially for the residents of Kajiado County; and, in light of the foregoing, the applicant urges the Court to allow its application; and

[5] UPON CONSIDERING the Replying Affidavit sworn on 14th January 2026 by Karen Wanjohi, the respondent's Legal Manager, together with the submissions dated 15th January 2026 in opposition to the application, the respondent contends that the applicant's explanation for the delay is inconsistent and unsatisfactory; that while the delay is attributed to internal bureaucratic processes, the applicant simultaneously states that its advocates filed the Notice of Appeal on 11th November 2025 out of abundance of caution, albeit still out of time, pending formal instructions; that no explanation has been offered as to why even this purported

cautious step was delayed, despite the advocates having received the Court of Appeal judgment on 24th October 2025. Further, the respondent argues that the applicant's reliance on the Maa Cultural and Tourism Festival is unsubstantiated; that the applicant has failed to identify the "necessary players" allegedly involved, their roles in the decision-making process, or how their participation in the festival impeded the issuance of instructions to file a simple Notice of Appeal; and given that the festival took place between 4th and 9th November 2025, no explanation has been provided as to why the decision to appeal could not have been made earlier, between 24th October and 3rd November 2025; and

[6] TAKING INTO ACCOUNT the respondent's submission that the applicant's reliance on public interest is contradictory and untenable, and that, as an equitable remedy, like the one before us, cannot be granted where the applicant simultaneously invokes public interest while attributing non-compliance to internal bureaucratic inefficiencies, thereby undermining the very public interest it claims to protect. The respondent further contends that the dispute has been ongoing since 2019, exposing it to a substantial claim of approximately Kshs. 17 billion; that having succeeded before the Court of Appeal, allowing the appeal would unjustly deprive it of the fruits of its judgment; and that the applicant has failed to demonstrate any arguable grounds of appeal, even in draft form, to warrant the Court's discretion. Accordingly, the respondent urges the Court to dismiss the application with costs; and

[7] BEARING IN MIND the guiding principles for the exercise of the discretion of extension of time articulated in the *Salat Case*; that extension of time is an equitable relief granted at the Court's discretion and assessed on a case-by-case basis; that the applicant must demonstrate a credible and adequate justification for the delay; that the explanation provided must be both reasonable and persuasive; that granting the extension should not result in undue prejudice to the opposing party; that the application must be brought promptly; and, where relevant, public interest may be a factor in the Court's determination; and

[8] APPRECIATING that, by Rule 15(2) of the Supreme Court Rules 2020, this Court is allowed to extend timelines set either by the Rules or through its own orders; and

[9] HAVING CONSIDERED the application, affidavits and rival arguments by both parties, **WE NOW OPINE** as follows:

- i. Applying Rule 15(2) that grants to the Court the unfettered discretion to extend the time limited either by the Rules or by any decision of the Court, and in view of the strictures in the *Salat Case*, the prayers will be granted only upon the Court being satisfied that, one, the applicant has presented a valid reason for the delay; two, that no prejudice will be suffered by the respondent if time is extended; and three, that the application for extension of time has been brought without undue delay.
- ii. On the first issue, the applicant attributes the delay to its internal consultations required by its governance framework, involving multiple county organs as well as competing commitments arising from the Maa Cultural Festival. The applicant has explained that by the provisions of Sections 7 and 16 of the Office of the County Attorney Act, Cap 265E, no action could be commenced by them with regard to the next step without approval of the County Assembly and Executive. That explanation alone, and not the Maa Cultural Festival, would suffice as a reasonable explanation, as it is based on the requirement of the law, coupled with our finding on the next issue. We are persuaded by the justification that layered decision-making structures of the applicant as a public body are necessary, particularly where decisions of significant financial and legal consequence, like in this case, are concerned.
- iii. The Court of Appeal having delivered its judgment on 24th October 2025, in terms of Rule 36(1) of this Court's Rules, the applicant ought to have filed its Notice of Appeal by 7th November 2025. It is common factor that the Notice of Appeal was belatedly filed on 11th November 2025. This was only three (3)

days after the stipulated statutory time had expired. Again, there is no dispute that two of those three days fell on a weekend. Therefore, the delay in question, in our view, was not inordinate.

- iv. On the question of prejudice, we do not see, and the respondent has not demonstrated, the nature of prejudice it stands to suffer apart from the averment that they will be delayed in accessing the fruits of the judgment. Just as it is, no doubt so entitled, the applicant is also entitled to a right of appeal, particularly having demonstrated that the delay was minimal and proffered a reasonable explanation. In any case, the respondent was duly served with the Notice of Appeal, which was filed in the Court of Appeal at Nairobi in **Civil Appeal No. 530 of 2019** on 11th November 2025. Though filed out of time, the respondent filed its Notice of Address for Service, a clear manifestation that it had notice of the applicant's intention to appeal. Moreover, the issues to be raised in the intended appeal are, in our view, weighty and ought to be resolved on merit.
- v. With regard to the applicant's prayer that "*the Notice of Appeal lodged at the Court of Appeal in Nairobi in **Civil Appeal No. 530 of 2019** on 11th November 2025 as duly and properly filed as at the date of determination of this application*", this Court has repeatedly cautioned that a document filed out of time and without leave of the Court is irregular and of no effect. See **Salat Case; County Executive of Kisumu Vs County Government of Kisumu & 8 others** [2017] KESC 16 (KLR); and **Amasava Vs Kenya Revenue Authority & another** [2025] KESC 64 (KLR). We therefore decline the invitation to sanitize that document.
- vi. Based on the foregoing, the Court is satisfied that the applicant has demonstrated sufficient cause to warrant the exercise of its discretion, meeting all the requirements as to a valid reason for the delay; no prejudice to the respondent and this application being brought timeously.

vii. On costs and on the authority of *Rai & 3 others Vs Rai & 4 others* [2014] KESC 31 (KLR), we order costs to be in the cause.

[10] ACCORDINGLY, we make the following Orders:

- i) *The Notice of Motion dated 4th December 2025 be and is hereby allowed.*
- ii) *The applicant shall file and serve a fresh Notice of Appeal within 14 days from the date of this decision.*
- iii) *The costs of this application shall be in the cause.*

It is so ordered.

DATED and DELIVERED at NAIROBI this 19th Day of June, 2026.

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P.M. MWILU
DEPUTY CHIEF JUSTICE & VICE PRESIDENT
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