



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

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

APPLICATION NO. E018 OF 2025

— BETWEEN —

CHRISTOPHER AMASAVA.....APPLICANT

-AND-

KENYA REVENUE AUTHORITY.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

(Being an application for extension of time to file a Notice of Appeal from the Judgment of the Court of Appeal (Sichale, Tuiyott & Ochieng, JJ.A) dated 21st March, 2025 in Civil Appeal No. E380 of 2022)

Representation:

Mr. Ombete for the Applicant
(L.M. Ombete & Company Advocates)

Mr. Andambi Chabala for the 1st Respondent
(Kenya Revenue Authority)

No appearance by the 2nd Respondent
(Attorney General's Chambers)

RULING OF THE COURT

[1] UPON CONSIDERING the Notice of Motion by the applicant dated 10th June 2025 and filed on 18th June 2025 brought pursuant to Rule 15(2) of the Supreme Court Rules 2020 for orders that the Court be pleased to: extend time within which the applicant may file a Notice of Appeal in this Court in accordance with Rule

15(2) of the Supreme Court Rules; and that costs of the application be in the cause; and

[2] UPON READING the affidavit sworn on 10th June 2025 by the applicant, together with the submissions of even date, in which it is deposed that the delay in filing the Notice of Appeal was occasioned by the applicant's former counsel who, through inadvertence, failed to account for weekends and public holidays in computing the 14-day statutory period, thereby causing the Notice of Appeal to be lodged out of time and without the applicant's knowledge; that upon discovering the lapse, the applicant changed legal representation, which transition further contributed to the delay as the new counsel required time to review the file; that the delay in filing the Notice of Appeal was neither deliberate nor inordinate, but arose from circumstances beyond the applicant's control; that the mistakes of former counsel should not be visited upon the applicant; that the intended appeal raises weighty constitutional and legal issues relating to fair administrative action, fair labour practices, and the mandate of public bodies, which warrant consideration on their merits by the Court; that the respondents will suffer no prejudice if this application is allowed; and that the application satisfies the guiding principles set out in ***Salat Vs Independent Electoral and Boundaries Commission & 7 others*** [Application No. 16 of 2014] KESC 12 (KLR) (the ***Salat Case***); and

[3] NOTING the Replying Affidavit sworn on 29th June 2025 by Victor Andambi Chabala, learned counsel for the 1st respondent, together with the accompanying submissions opposing the application, wherein it is contended that the judgment of the Court of Appeal was delivered on 21st March 2025, while the present application was filed on 18th June 2025, nearly three months thereafter; that although the applicant attributes the delay to his former advocate, this allegation is unsubstantiated; that the applicant has not demonstrated any effort made through correspondence or otherwise to follow up with his advocate to ensure that the time-bound action was undertaken within the statutory period, contrary to the

holding by this Court in ***Gaciani & 11 Others Vs Kimanga & Another*** [2023] KESC 23 (KLR); that it was incumbent upon the applicant to diligently follow up with his advocate and ensure that his instructions were properly executed; that the applicant was indolent, guilty of laches and should not be permitted to benefit from his own inaction; that no sufficient grounds have been established to warrant the grant of the orders sought; and that the 1st respondent stands to suffer prejudice in terms of time and additional litigation costs, as its financial planning will be negatively impacted given that it ceased making provision for this claim five years ago and wrote it off from its books of accounts; and

[4] BEARING IN MIND the application, affidavits, and rival arguments by both parties, noting that there was neither an appearance nor responses filed by the 2nd respondent, **WE NOW OPINE** as follows:

- i. By Rule 15(2) of the Supreme Court Rules 2020, this Court has inherent authority to extend timelines set either by the Rules or by its own orders.
- ii. The guiding principles for the exercise of this discretion were articulated in the ***Salat Case***. These include: 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, that public interest may be a factor in the Court's determination.
- iii. Applying these principles to the facts in the instant case, from the record, the Court of Appeal, having delivered its judgment on 21st March 2025, the applicant ought to have filed its Notice of Appeal by 4th April 2025. The applicant has admitted to belatedly filing its Notice of Appeal on 10th April 2025, being six (6) days after the expiry of the statutory stipulated time.

- iv. That delay, irrespective of the length, must be adequately explained. Whereas the applicant attributes the delay to his former advocate, this Court in ***Muia & another Vs Kababu*** [2019] KESC 87 (KLR) expressed that:

“While we recognize the principle that the mistakes of an advocate, ought not to be visited upon his client, there is no evidence on record, to show that such instructions, as had been given by the Applicants to their advocates to file a Notice of Appeal were not acted upon by the latter. Nor is there any communication on record, to back up the claim by the Applicants, to the effect that, their advocates had all along misled them into believing that, Certification Proceedings had been commenced at the Court of Appeal.”

See also ***Gaciani & 11 others Vs Kimanga & another*** (*supra*) where this Court emphasized that a litigant must demonstrate diligence in ensuring that a Notice of Appeal and /or an application for extension of time was filed within time or soon after the period for filing had expired and ***Waruhiu Vs Munene & another*** [2021] KESC 42 (KLR) that parties bear a duty to remain actively interested in and to follow up on the progress of their cases, even when represented by counsel.

- v. In view of the foregoing and considering that what the applicant seeks is an equitable relief to be granted at the Court’s discretion, we find that the applicant has failed to demonstrate a credible and adequate justification for the delay, and that the present application has not been brought promptly.
- vi. The applicant has failed to demonstrate diligence on his part to follow up on the progress of his case. He has not annexed any correspondence with his erstwhile counsel or any communication with the current counsel and the date when the latter was instructed.

- vii. Moreover, from April, when the Notice of Appeal was filed, it took the current advocates approximately two (2) months to file the instant application, a delay that has not been explained at all. These are factors and particulars which must be fully disclosed by the party seeking equitable relief and cannot be left to the Court to assume.
- viii. Without leave and being aware he was out of time, the applicant proceeded nonetheless to lodge the Notice of Appeal and subsequently brought this Motion to regularise the omission. We restate what we have repeatedly said, in cases like the ***Salat Case*** and ***County Executive of Kisumu Vs County Government of Kisumu & 8 others*** [2017] KESC 16 (KLR), that a document filed out of time without leave is irregular.
- ix. For these reasons, we find that the applicant is not deserving of the remedy of extension of time and dismiss this application in its entirety.
- x. On the issue of costs, bearing in mind that costs follow the event as enunciated in ***Rai & 3 others Vs Rai & 4 others*** [2014] KESC 31 (KLR), the applicant shall bear the costs of this application.

[5] ACCORDINGLY, we make the following Orders:

- i) ***The Notice of Motion dated 10th June 2025 and filed on 18th June 2025 be and is hereby dismissed.***
- ii) ***The applicant shall bear the costs of this application.***

It is so ordered.

DATED and DELIVERED at NAIROBI this 14th Day of November, 2025.

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

.....
M.K. IBRAHIM
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

