



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

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

APPLICATION NO. E011 OF 2026

-BETWEEN-

THE SPEAKER, NATIONAL ASSEMBLY.....APPLICANT

-VERSUS-

THE BLOGGERS ASSOCIATION OF KENYA (BAKE).....1ST RESPONDENT

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

THE INSPECTOR GENERAL OF

THE NATIONAL POLICE SERVICE.....3RD RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS.....4TH RESPONDENT

ARTICLE 19 EAST AFRICA.....5TH RESPONDENT

KENYA UNION OF JOURNALISTS.....6TH RESPONDENT

LAW SOCIETY OF KENYA.....7TH RESPONDENT

(Being an Application for extension and enlargement of time to file a Notice of Appeal against the Judgment of the Court of Appeal of Kenya (Kiage, Muchelule, and Korir JJA) delivered on 6th March, 2026 in Civil Appeal No. 197 of 2020, pursuant to Articles 50 and 159 of the Constitution and Rules 3(2), 3(5), 15(2), 31(6) and 36 of the Supreme Court Rules, 2020)

Representation:

S.M. Mwendwa, Advocate, for the Applicant

(The Speaker, National Assembly)

Fredah Mwanza, Prosecution Counsel, for the 4th Respondent

(The Director of Public Prosecutions)

Mr. Ochiel J. D. for the 5th, 6th, and 7th Respondents

(Bond Advocates LLP)

No appearance for the 1st, 2nd and 3rd Respondents

RULING OF THE COURT

[1] UPON CONSIDERING the applicant's Notice of Motion dated 31st March 2026 and filed on 8th April 2026, pursuant to Articles 50 and 159 of the Constitution, Rules 3(2), 3(5), 15(2), 31(6) and 36 of the Supreme Court Rules, 2020, seeking orders *inter alia* that-

a.

b. The Applicant be granted leave to file a Notice of Appeal out of time.

c. This Honourable Court be pleased to enlarge and extend the time for filing a Notice of Appeal against part of the judgment and Order of the Court of Appeal delivered on 6th March 2026.

d. The Applicant's Notice of Appeal be deemed as duly filed, served and properly on record.

e. Upon grant of Prayers No. b and c, the Applicant be allowed to file and serve a Petition of Appeal and Record of Appeal.

f. The costs of the application be in the cause; and

[2] UPON FURTHER CONSIDERING the affidavit in support of the Motion sworn by Mr. Samuel Njoroge, CBS on 31st March 2026 and filed on 8th April 2026, together with written submissions of even date, wherein the applicant avers that the delay in filing the appeal arose from a *bona fide* process of reviewing the judgment and obtaining final instructions; that the intended appeal raises weighty questions on legal and constitutional interpretation of the issues in dispute, including the scope of legislative authority, the protection of fundamental rights and the regulation of conduct in the digital space; that the decision of the Court of Appeal is far-reaching as it renders the impugned provisions of the Computer Misuse and Cybercrimes Act, No. 5 of 2018 inoperative thus creating a *lacuna* in the regulation of false publications and harmful digital conduct; and that the decision undermines the applicant's legislative mandate to enact laws for the protection of the public in the digital space. The applicant therefore avers and asserts that it intends to seek legal certainty and protect the public interest by appealing the decision of the Court of Appeal; the applicant also beseeches the Court to exercise its judicial discretion under Rule 15(2) and Rule 36(1) of the Supreme Court Rules and extend time for filing of a Notice of Appeal; and

[3] IN SUPPORT OF THE APPLICATION, the applicant relies on this Court's decisions in *Nicholas Kiptoo Arap Korir Salat Vs Independent Electoral and Boundaries Commission & 7 others*, [2014] KESC 12 (KLR); *County Executive of Kisumu Vs County Government of Kisumu & 8 Others*, [2017] KESC 16 (KLR); *Sundowner Lodge Limited Vs Kenya Tourist Development Corporation* [2019] KESC 71 (KLR); and *Muya Vs Tribunal Appointed to Investigate the Conduct of Justice Martin Mati Muya, Judge of the High Court of Kenya*, [2022] KESC 16 (KLR) on the principles for granting leave to extend time to file pleadings out of time; and

[4] NOTING that the 1st, 2nd, and 3rd respondents did not file a response to the application; and

[5] TAKING INTO ACCOUNT the 4th respondent's affidavit sworn on 16th April 2024 (*sic*) by Freda Muindi Mwanza, a Prosecution Counsel in support of the Motion and reiterating that the decision of the Court of Appeal, declaring as unconstitutional sections 22 and 23 of the Computer Misuse and Cybercrimes Act, No. 5 of 2018, has created a legal vacuum in the regulation of false publication and harmful digital conduct; that the decision of the Court of Appeal offends Article 33 (2) of the Constitution; and that the 4th respondent has also filed its Petition of Appeal dated 13th April 2026 (SC Petition E008 of 2026) emanating from the same Court of Appeal decision; and

[6] FURTHER TAKING INTO ACCOUNT the 5th, 6th, and 7th Respondent's grounds of opposition and written submissions both dated 13th April 2026 filed on 17th April 2026 to the effect that; a Notice of Appeal is a routine and uncomplicated filing as a matter of cause while parties assess their chances; that the applicant has failed to explain what consultations led to the delay from the deadline of 20th March 2026 to 31st March 2026 when the application was filed; the same advocate, Mr. S.M. Mwendwa, now appearing for the applicant in this court, was on record for the applicant at the Court of Appeal and was therefore seized of the issues in contest; the respondents will suffer irreparable prejudice if leave is granted, as they will have to defend and prosecute multiple appeals; and the applicant has the opportunity of filing a cross-appeal on other Petitions filed within time thus undeserving of extension of

time. Notwithstanding the above submissions, the above respondents concede that the delay, though not inordinate, must be explained by the applicant; and

[7] **IN OPPOSING THE MOTION**, the 5th, 6th, and 7th respondents rely on the principles set by this Court in *Nicholas Kiptoo Arap Korir Salat Vs Independent Electoral and Boundaries Commission & 7 others (Supra)*, which they distinguish from the case of *Sundowner Lodge Limited Vs Kenya Tourist Development Corporation (supra)*; *Itolondo Vs Attorney General & 9 Others* [2021] KESC 44 (KLR) and *Kimweli & 46 Others Vs National Social Security Fund* [2026] KESC 7 (KLR); and

[8] Having considered the application, affidavits, and rival arguments by the parties, **WE NOW OPINE AS FOLLOWS:**

- i. We reiterate the principles for extension and enlargement of time to lodge an intended appeal that were set out in *Salat Vs Independent Electoral and Boundaries Commission & 7 Others* [2014] KESC 12 (KLR), which are now well settled as being 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 who seeks for extension of time has the burden of laying a basis for grant of such extension 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 still 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.*

- ii. Rule 36 (1) of the Supreme Court Rules, 2020 provides that a person who intends to institute an appeal to this Court shall file a Notice of Appeal within fourteen (14) days from the date of Judgment or Ruling which is the subject of appeal. The instant application was filed on 31st March 2026, whereas the Court of Appeal Judgment was delivered on 6th March 2026.
- iii. Rule 15 (2) of the Supreme Court Rules, 2020, grants the Court discretionary power to enlarge time where a party has failed to comply with the timeline prescribed by the Rules or by an order of the Court.
- iv. Applying the principles on extension of time set out in the ***Salat Case (supra)***, we note that the applicant has attributed the delay to internal processes of reading the Judgment, obtaining instructions, and thereafter making the decision on whether or not to appeal. The 5th, 6th, and 7th respondents, on the other hand, argue that they will be prejudiced if the application is allowed, as they will have to prosecute and defend multiple appeals.
- v. We note the above rival arguments, and it is our view that the ten (10) days' delay by the applicant to file a petition of appeal is not inordinate; it falls within a reasonable time to consult and decide on whether or not to appeal. The 5th, 6th, and 7th respondents' averment that they will be prejudiced by defending multiple appeals is not convincing as the issues in the appeals are the same as were before the appellate court and are also well known to the respondents; this court may also, on the application of the parties or on its own motion, consolidate the appeals thus reducing the necessity to defend multiple appeals. The 5th, 6th, and 7th respondents have therefore not demonstrated the prejudice they will suffer if an extension of time is granted.
- vi. In the end, having considered the pleadings and submissions of all the parties, we are satisfied that the applicant has 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 to the applicant, and we thus allow the application.
- vii. We, however, on the authority of the ***Salat*** case in a long line of other decisions of the Court, decline the invitation to deem the Notice of Appeal on record as duly filed, served, and properly on record. We reiterate that a document filed out of time and without leave is irregular and is of no effect.

viii. In line with our decision in ***Jasbar Singh Rai & 3Others Vs Tarlochan Singh Rai & 4 Others***, [2014] KESC 31 (KLR), costs shall be in the cause.

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

- i. The Notice of Motion dated 31st March 2026 and filed on 8th April 2026 be and is hereby allowed as prayed.***
- ii. The applicant is granted seven (7) days from the date of this Ruling to file afresh and serve its Notice of Appeal;***
- iii. The costs of the application shall be in the cause.***

It is so ordered.

DATED and DELIVERED at NAIROBI this...17thday of.....July.....2026

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

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

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

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

.....
M. WARSAME
JUSTICE OF THE SUPREME COURT

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

REGISTRAR,
SUPREME COURT OF KENYA