



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

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

APPLICATION NO. E035 OF 2020

-BETWEEN-

WILLIAM OLOTCH.....APPLICANT

-AND-

PAN AFRICA INSURANCE COMPANY LIMITED.....RESPONDENT

(Being an application for extension of time to file an application for review of the Court's Ruling delivered on 5th March, 2021 (Mwilu; DCJ & VP, Ibrahim, Wanjala, Njoki Ndungu & Lenaola, SCJJ), dismissing the applicant's application to review the decision of the Court of Appeal declining to certify the dispute between the parties as one involving a matter of general public importance)

Representation:

Mrs. Pamela Ochieng, Advocate for the Applicant
(Olotch & Company Advocates)

Mr. James Muthui, Advocate for the Respondent
(Kaplan and Stratton Advocates)

RULING OF THE COURT

[1] UPON READING the Motion dated 21st August, 2025 and filed on 25th August, 2025 pursuant to Sections 21(4) and 23(2)A of the Supreme Court Act, Cap 9B Laws of Kenya and Rules 15(2) and 31 of the Supreme Court Rules, 2020 seeking extension of time to file an application to review the Ruling of this Court delivered on 5th March, 2021, dismissing the applicant's Originating Motion dated 16th September, 2020 seeking to review the decision of the Court of

Appeal delivered on 22nd May, 2020 declining to grant certification to the applicant to file an appeal to this Court under Article 163(4)(b) of the Constitution; and

[2] UPON PERUSING the grounds on the face of the application, the supporting affidavit of William Olotch sworn on 21st August, 2025, and the submissions of even date to the effect that this Court, in its Ruling delivered on 5th March, 2021, dismissed the applicant's Motion dated 16th September, 2020 seeking to review the decision of the Court of Appeal that declined to certify the dispute between the parties as raising or involving matters of general public importance and therefore requiring the further input of this Court; and

[3] NOTING THAT, it is that Ruling that the applicant now seeks to review on the ground that there is new and important evidence of fact arising from the Judgment of the High Court (*Musyoki, J.*) delivered on 11th July, 2025 in ***HCCC No. 331 of 2003 Mae Properties Limited Vs William Olotch*** where the High Court dismissed a suit filed by the respondent's subsidiary against the applicant seeking recovery of profits made from the sale of plots amounting to Kshs.15,225,000/-; specifically, that the new evidence which should be considered by this Court is the observation made by the High Court that; *'if the sale were sanctioned by the Board of Directors and approved by the shareholders, I would not find any breach of fiduciary duty.'*; that this finding exonerates the applicant and ought to be considered by this Court; and

[4] UPON CONSIDERING that, in further explaining the significance of this observation, the applicant contends that he was dismissed as the Managing Director of the respondent for having breached his fiduciary duties by buying more plots of land than was allowed, and selling them at a profit; that this dismissal came after a shareholder of the respondent herein, being Hubris Holding Limited, formally complained to the respondent's Board as captured in minutes of the latter's meeting dated 6th July, 2001; and that Hubris Holding Limited is a wholly owned subsidiary company of African Life Insurance Company Limited, a company that the respondent had invited to be a technical

partner to assist in developing the respondent's life assurance business; further that, the respondent had rights to shares issued to enable African Life Insurance Company Limited acquire a stake and it subsequently acquired 46.1% of the shares making it the respondent's single largest shareholder; furthermore that, the new evidence coupled with the factual background above raises crucial issues for this Court's determination and which he enumerates as follows: *whether the principle of natural justice applies to all contracts; where an employer summarily dismisses an employee on grounds of gross misconduct (under the repealed Employment Act, Cap 226) and an employee disagrees, does the employee have a right to be heard and the employer an obligation to disclose details of the grounds of misconduct?; where a company has disciplinary regulations, are they deemed to be part of the contract of employment?; and whether a termination of an employee's contract of employment can be retroactive; and regarding the 4th issue, he specifically contends that it was improper for his letter of termination to have been dated 17th July, 2001 while the resolution referred to in the letter was allegedly passed on 13th July, 2001 yet the effective date of his termination was stated as 6th July, 2001; and*

[5] FURTHER CONSIDERING the applicant's contention that the reason for delay in filing the instant application is reasonable and satisfactory given that he is relying on new evidence contained in a Judgment delivered on 11th July, 2025; and relying on the decision in ***Shabbir Ali Jusab Vs Anaar Osman Gamrai & Attorney General*** (Civil Appeal No. 1 of 2013) [2013] KESC 9 (KLR), he argues that filing his application only one month after delivery of the said Judgment is not inordinate in the circumstances and implores the Court to accept his explanation for the delay; and

[6] TAKING INTO ACCOUNT the respondent's replying affidavit sworn by Gladys Muema, the respondent's Legal Manager, on 29th August, 2025 together with written submissions of even date filed in opposition to the Motion to the effect that the application is misconceived, lacks merit and is an abuse of the

Court process as it fails to disclose proper and sufficient grounds to extend time; that the application is an afterthought having been filed more than four (4) years after the Ruling of 5th March, 2021 and more than a month after the Judgment sought to be relied on; that the delay is inordinate and, if the application is allowed, it would occasion great prejudice to the respondent as the applicant cannot keep dragging the respondent to court and expose it to added as well as unending litigation; further, that the power to review under Section 21(4) of the Supreme Court Act embodies the slip rule, empowering the Court to correct only clerical errors or errors apparent on the face of a judgment or ruling without altering the substance of the decision and the applicant has failed to prove such errors in the Ruling of 5th March, 2021 to warrant review under the slip rule; and

[7] FURTHER NOTING the respondent's contention that the parameters for review under Section 21(4) of the Supreme Court Act and the decision in ***Outa Vs Okello & 3 Others*** (Petition No. 6 of 2014) [2017] KESC 25 (KLR) (***Outa case***) do not include the production of new evidence or any other ground that permits the substantive reopening of a decision on merit; moreover, that the new evidence alluded to, being a Judgment of the High Court in ***HCCC No. 331 of 2003 Mae Properties Limited Vs William Olotch***, is incapable of justifying review as it was between different parties from the parties herein and also arose from different causes of action; and specifically that, ***HCCC No. 331 of 2003*** was a claim for special, general and punitive damages for alleged breach of fiduciary duty while the present matter between the applicant and respondent was an employment dispute and therefore the Judgment of 11th July, 2025 has no relevance or implications on the finding by this Court that the dispute between the applicant and respondent did not transcend the special and private relationship between the parties so as to attract the qualification of being a general public importance; additionally, that the High Court in ***HCCC No. 331 of 2003*** being alive to the fact that the issue of breach of fiduciary duty was litigated in ***HCCC No. 509 of 2002*** between the applicant and the respondent herein and was affirmed by the Court of Appeal in ***Civil Appeal***

No. 357 of 2017, the High Court (*Musyoki J.*) noted that it could not depart or contradict the decision and therefore its only duty was to determine whether the breach of fiduciary duty resulted in loss to Mae Properties Limited and whether the same was recoverable from the applicant; that in any case, Mae Properties Limited has appealed the Judgment delivered on 11th July, 2025 and the said Judgment is therefore not final and cannot be the basis for reopening a matter before this Court; and

[8] HAVING considered the application, affidavits and rival arguments by the parties, **WE NOW OPINE** as follows:

- i) **APPRECIATING** that this Court is clothed with unfettered discretion under Rule 15(2) of the Supreme Court Rules to extend the time for filing any document; and that the principles that govern the exercise of such discretion are set out in ***Salat Vs. Independent Electoral and Boundaries Commission & 7 others*** (Application 16 of 2014) [2014] KESC 12 (KLR) (the ***Nicholas Salat case***) as follows: “...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; a party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court; whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court; whether there will be any prejudice suffered by the respondents if the extension is granted; whether the application has been brought without undue delay; and whether in certain cases, like election petitions, public interest should be a consideration for extending time...”.
- ii) Applying the principles on extension of time to the instant application, we note that the reason proffered for seeking this Court’s indulgence is the delivery of a Judgment by the High Court in ***HCCC No. 331 of 2003 Mae Properties Limited Vs William Olotch***, on 11th July, 2025 and

which the applicant believes exonerates him from culpability in the dispute between him and the respondent. It is common ground in that context that the suit in **HCCC No. 331 of 2003** was a resultant claim from the dispute between the applicant and the respondent herein being **HCCC No. 509 of 2002** and affirmed by the Court of Appeal in **Civil Appeal No. 357 of 2017**. It is also common ground that the dispute between the applicant and the respondent was an employment issue arising from breach of fiduciary duty by the applicant in his capacity as the respondent's Managing Director, while the suit in **HCCC No. 331 of 2003** was a claim for special, general and punitive damages for alleged breach of fiduciary duty which resulted in loss to Mae Properties Limited and which Mae Properties Limited has been seeking to recover from the applicant.

iii) Turning to the Motion before us, it is our observation that there has been a delay of more than four (4) years in bringing the said application. The applicant, in seeking extension of time, attributes the delay to the delivery of the Judgment of the High Court on 11th July 2025, which was rendered slightly over a month prior to the filing of the instant application. While a delay of one month, in isolation, may not be deemed inordinate, it must be considered holistically in light of the explanation offered for the delay and the plausibility of the intended purpose for seeking extension of time. In this regard, we note that the applicant seeks to rely on the said Judgment of 11th July 2025 in **HCCC No. 331 of 2003** as the basis for seeking a review of this Court's Ruling delivered on 5th March 2021.

iv) Guided by the provisions of Section 21A of the Supreme Court Act as well as Rule 28(5) of the Supreme Court Rules, 2020, together with the principles enunciated in the **Outa case**, as a general rule, the Supreme Court cannot sit on appeal over its own decisions, or to review its decisions, save to correct obvious errors apparent on the face of the decision. However, in the exercise of its inherent powers, the Court may

review its decision(s) “**in exceptional circumstances, so as to meet the ends of justice**” where:

- i. *The judgment, ruling or order is obtained through fraud, deceit or misrepresentation of facts;*
 - ii. *The judgment, ruling or order is a nullity by virtue of having been made by a court which was not competent;*
 - iii. *The court was misled into giving judgment, ruling or order under the belief that the parties had consented thereto; and*
 - iv. *The judgment, ruling or order was rendered on the basis of repealed law or as a result of a deliberate concealment of a statutory provision.*
- v) Having considered the pleadings and submissions by the parties herein, and applying these conditions to this application, we find that the reason proffered by the applicant of new and important evidence is not one of the parameters for review under Section 21(4) of the Supreme Court Act or the legal principles settled in the ***Outa*** case.
- vi) In our view, the instant application is an attempt to justify moving beyond the confines of the slip rule and an invitation to reopen our determination on merit on the basis of the Judgment by the High Court delivered on 11th July, 2025 in ***HCCC No. 331 of 2003*** which, as we have highlighted hereinabove, is between different parties from those in the instant application and arises from different causes of action. We therefore find that the application does not fall within the confines of the parameters prescribed in the foregoing paragraphs.

[9] Consequently, we have no hesitation in finding that, as framed, the application falls short of the requirements for extension of time and equally falls short of exceptional circumstances for review of a decision under Section 21(4) of the Supreme Court Act. Accordingly, we decline the invitation to exercise the Court’s limited discretion to extend time in order to review the Ruling delivered on 5th March, 2021.

[10] On costs, the award of the same is discretionary and follows the principle set out by this Court in ***Jasbir Singh Rai & 3 other Vs Tarlochan Singh Rai & 4 others***, (Petition 4 of 2012) [2014] KESC 31 (KLR) that costs follow the event. In exercise of our discretion, we see no reason to deviate from this and order that the applicant shall pay the costs of this application.

[11] **ACCORDINGLY**, and for the reasons aforestated, we make the following orders:

- i. The applicant's Motion dated 21st August, 2025 and filed on 25th August, 2025 be and is hereby dismissed; and***
- ii. The applicant shall pay the costs of the 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 **S. C. WANJALA**
JUSTICE OF THE SUPREME COURT **JUSTICE OF THE SUPREME COURT**

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

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA