



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

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

APPLICATION NO. E022 OF 2026

— BETWEEN —

ANTHONY KIBANDI WATUKU.....APPLICANT

-AND-

**INDUSTRIAL & COMMERCIAL DEVELOPMENT
CORPORATION.....RESPONDENT**

*(Being an application for extension of time to file and serve the petition of
appeal out of time)*

Representation:

The Applicant acting in person

Obura Mbeche & Co. Advocates for the Respondent

RULING OF THE COURT

[1] UPON PERUSING the Notice of Motion dated 4th June 2026 and filed on 12th June 2026, pursuant to Article 163(4)(a) of the Constitution, Section 15A of the Supreme Court Act 2011, Rule 15(2) of the Supreme Court Rules 2020, and Section 28(5) of the Persons with Disabilities Act 2025, and seeking the following orders:

- a) THAT this Honourable Court be pleased to grant the Applicant an extension of time to file and serve a Petition of Appeal against the Judgment*

and Order of the Court of Appeal, Nairobi dated and delivered on 9th May 2025 in Civil Appeal No. E206 of 2020; and

b) THAT the costs of and incidental to this application do abide the result of the intended appeal.

[2] UPON CONSIDERING the applicant's grounds on the face of the application and the affidavit sworn in support thereof by *Anthony Kibandi Watuku* (the applicant, acting in person) on 4th June 2026, wherein he contends that he filed a Notice of Appeal in the Court of Appeal on 22nd May 2025 and, on the same day, transmitted a copy thereof to the Supreme Court and served it upon the respondent; that earlier on 19th May and 18th June 2025 respectively, he had requested, through the e-filing platform, the decree and certified copies of the proceedings; that on 27th June 2025, the Deputy Registrar of the Court of Appeal delivered a ruling on settlement of terms and issued consequential orders, which the applicant was dissatisfied with, prompting him to file an application for settlement of terms before a single Judge on 4th July 2025; that the application was determined on 30th January 2026, with the learned Judge, at paragraph 5 of the ruling, encouraging the parties to engage the Registrar with a view to reaching an amicable settlement; that pursuant thereto, negotiations commenced on 25th February 2026 and continued until 18th May 2026, when the parties concluded the discussions through the respondent's payment of Kshs. 340,070.10 to the applicant; that the foregoing process occasioned a delay, with the result that the prescribed period for filing the Petition of Appeal lapsed; that the respondent will suffer no prejudice, having been aware of the Notice of Appeal; and that the application has been brought without undue delay; and

[3] UPON EXAMINING the applicant's submissions and supplementary submissions dated 4th and 29th June 2026, respectively, reiterating the above averments; and

[4] UPON ASSESSMENT of the respondent's replying affidavit sworn by *Wamuyu Kariuki, Esq.*, on 23rd June 2026 and submissions dated 22nd June 2026, both filed on 24th June 2026, wherein it is contended that the applicant's case is premised on two judgments, being the judgment of the Court of Appeal dated 9th May 2025 and that of the Employment and Labour Relations Court dated 20th December 2021, as well as two rulings of the Court of Appeal dated 27th June 2025 and 30th January 2026; that none of the four decisions demonstrates any misinterpretation of the Constitution; that although the applicant seeks an extension of time, neither party has filed before the Court of Appeal any document evidencing the settlement of terms and, consequently, a decree is yet to issue; that the applicant is seeking to pursue an appeal before this Court without first completing the steps necessary to institute the intended appeal; that the applicant has failed to meet the threshold for the exercise of the Court's jurisdiction under Section 15(2) of the Supreme Court Act; and that the application should therefore be dismissed; and

[5] COGNISANT OF THE FACT that this Court is clothed with unfettered discretion under Rule 15(2) of the Supreme Court Rules to extend the time limited by its Rules or by its decisions and that principles that govern the exercise of such discretion are enunciated in *Salat Vs Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR) to the effect 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 seeking extension of time has the burden of laying a basis 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 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;*

[6] WE NOW OPINE as follows:

- i. The judgment of the Court of Appeal, which is the subject of the applicant's intended appeal, was delivered on 9th May 2025. The applicant duly lodged his Notice of Appeal on 22nd May 2025 and, on the same day, transmitted a copy thereof to the Supreme Court Registry, thereby evincing his intention to invoke this Court's appellate jurisdiction. Notwithstanding this, the instant application was filed on 12th June 2026, more than one year after the delivery of the impugned judgment and the lodgement of the Notice of Appeal, representing an inordinate delay.
- ii. The next question is whether the delay has been satisfactorily explained. The record indicates that, in compliance with Rule 36(2) of the Court of Appeal Rules, the applicant prepared a draft order for settlement pursuant to paragraph 70 of the impugned judgment, which provided as follows:

“70. In the end, save for the success in the appellant proving that he was entitled to enhanced salary from January 2017 to May 2017, when he had a separation with the Corporation, the appeal has no merit. The difference between the salary paid to the appellant and the enhanced salary for this period shall be worked out by the Corporation. The difference shall attract interest at court rates from the date when the petition was filed until payment in full or on the date it shall be offset from any

amounts owed to the respondent by the appellant. Save for this very limited success, the appeal fails. Each party to bear its own costs.”

- iii. The contents of the draft order were disputed by the parties, and in her ruling dated 27th June 2025, the Deputy Registrar was unable to resolve the dispute, noting that the judgment had not specified the applicable figures. Dissatisfied with the outcome, the applicant moved the court before a single Judge, who, in the ruling dated 30th January 2026, encouraged the parties to pursue an amicable settlement before the Registrar. The parties subsequently engaged in negotiations, which culminated in the respondent crediting the applicant's account with Kshs. 340,070.10 on 18th May 2026.
- iv. The applicant has attributed the delay to this process, which he argues took some time to conclude. In our view, this explanation is not plausible. Upon invoking this Court's jurisdiction by lodging the Notice of Appeal, time began to run, and nothing prevented the applicant from pursuing his intended appeal while simultaneously engaging in the process of settling the terms of the impugned judgment. More significantly, having participated in that process, pursued negotiations arising therefrom, and ultimately accepted the monetary benefit of Kshs. 340,070.10 pursuant to the settlement, the applicant cannot, without further explanation, seek to challenge the very judgment from which he has elected to derive and accept a benefit.
- v. In the circumstances, and specifically because the provisions of Rule 15(2) of the Supreme Court Rules and strictures enunciated in ***Salat Vs Independent Electoral and Boundaries Commission & 7 others*** (supra) have not been met, the application must fail.
- vi. As regards costs, the settled rule is that costs follow the event. However, in view of the fact that the applicant is a person with disability, and

pursuant to Section 28(3)(a) of the Persons with Disabilities Act, we exempt him from paying the costs of this application.

[7] CONSEQUENTLY, and for reasons aforesaid, we make the following **ORDERS**:

a) The Notice of Motion dated 4th June 2026 and filed on 12th June 2026 is hereby dismissed.

b) Each party shall bear its own costs.

It is so Ordered.

DATED and DELIVERED at NAIROBI this 30th Day of October 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

.....
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