



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

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

APPLICATION NO. E035 OF 2020

BETWEEN

WILLIAM OLOTCH.....APPLICANT

-AND-

PAN AFRICAN INSURANCE COMPANY LIMITED.....RESPONDENT

(Application for extension of time to file an application to review the Ruling of this Court delivered on 5th March 2021 (Mwilu, DCJ & VP; Ibrahim, Wanjala, Njoki, & Lenaola, SCJJ)

Representation:

Mr. William Olotch, Applicant
(Acting in Person)

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

RULING OF THE COURT

[1] UPON PERUSING the applicant's Notice of Motion dated 8th June 2026, and filed on 11th June 2026, supported by the affidavit of Mr. William Olotch sworn on 8th June 2026, supplementary affidavit sworn on 30th June 2026, his written submissions dated 8th June 2026, and further written submissions dated 30th June 2026 wherein the applicant urges this Court to extend the time for filing an application for review of the Ruling of this Court delivered on 5th March 2021 where this Court dismissed the applicant's Originating Motion dated 16th September 2020 seeking a review the decision of the Court of Appeal

delivered on 22nd May 2020 declining to certify the dispute between the parties as one involving a matter of general public importance; and

[2] NOTING by way of background, that the applicant set out the litigation history as follows: in 2002, he instituted a suit before the High Court, ***William Olotch Vs Pan African Insurance Company Limited***, HCCC 509 of 2002, seeking, *inter alia*, declaratory orders that his summary dismissal from the position of Managing Director of the respondent's company was unlawful; he also claimed certain sums as salary in lieu of notice, accrued leave, salary arrears, club membership, severance pay, dues for 8 years of service, and translocation expenses; the respondent, in turn, counterclaimed for delivery of motor vehicle registration KAM 509M or payment of Kshs. 3,575,000.00/- in lieu thereof as well as damages for loss of use of motor vehicle; the High Court (*Sergon J*), in a judgment delivered on 9th March 2017, dismissed the claim and ordered the applicant to pay Kshs. 4,737,187.60 plus costs to the respondent; the applicant preferred an appeal, and the appellate Court (*Warsame (as he then was), Musinga and Kiage, JJA*), in a judgment delivered on 10th May 2019, dismissed his appeal with no order as to costs; and

[3] THEREAFTER, the applicant filed a Notice of Motion dated 17th July 2019, seeking certification of his intended appeal to this Court as one involving a matter of general public importance; the Court of Appeal (*Ouko, Koome (as they then were) and Murgor, JJA.*), in its Ruling delivered on 22nd May 2020, declined the application for certification and dismissed the same; undeterred, the applicant filed ***Originating Motion No. 25 of 2020*** before this Court, seeking a review of the Ruling of the Court of Appeal; this Court, in its Ruling delivered on 5th March 2021, dismissed the Motion, holding that mere dissatisfaction with the manner in which courts below determined disputed facts is not by and of itself a good reason to raise the matter to the high platform of general public importance; and

[4] FURTHER NOTING that, it is that Ruling of this Court delivered on 5th March 2021 that the applicant now seeks extension of time to review on the

following grounds: that the delay in filing was occasioned by a *bona fide* belief on his part that there is new and important evidence of fact arising from the judgment of the High Court (*Musyoki J*) in ***Mae Properties Limited Vs William Olotch*** HCCC No. 331 of 2003 delivered on 11th July 2025, in his favour and relevant to his intended review as the High Court dismissed a suit filed by the respondent's subsidiary company against the applicant seeking recovery of profit made from sale of certain plots of land amounting to Kshs.15,225,000/-; specifically that the new evidence, which should be considered by this Court, is the observation of 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 of the High Court exonerates the applicant and ought to be considered by this Court; *secondly*, that the applicant was apprehensive that this Court would dismiss his application, and as such, waited for the determination in ***Mae Properties Limited Vs William Olotch*** HCCC No. 331 of 2003 to obtain relevant evidence to substantiate his application; *thirdly*, that in line with Article 159 (2)(d) of the Constitution, he urges this Court to ignore the inordinate delay as it was in pursuit of justice; that for unavoidable reasons, the applicant lacked legal representation, and therefore drafted and filed the pleadings herein in person, which further explains the delay; and *lastly*, that the respondent will not suffer any prejudice as it is the applicant who continues to suffer prejudice having lost his employment and therefore his source of income; and

[5] TAKING INTO ACCOUNT the respondent's replying affidavit sworn by Ms. Gladys Muema, Legal Manager, Sanlam Allianz Holding (Kenya) PLC (*formerly Pan Africa Insurance Company Limited*), on 18th June 2026 and filed on 29th June 2026, together with written submissions of even date, wherein she contends that; the present application is *res judicata* as the applicant's Notice of Motion dated 21st August 2025, which was determined by this Court on 14th November 2025, was identical in form and substance to the present application as both applications seek extension of time to file a review against the Ruling of this Court dated 5th March 2021; that the mere re-labelling

of the application and its filing under a different legal basis does not defeat the doctrine of *res-judicata* since the substantive relief sought and the issues to be determined are identical; that the applicant seeks to re-open and re-litigate issues that have already been conclusively determined by this Court; that in the circumstances, this Court is *functus officio*, its hands are tied and it cannot re-open the matter; that the applicant seeks to rely on new evidence from the High Court judgment in ***Mae Properties Limited Vs William Olotch***, HCCC No. 331 of 2003 delivered on 11th July 2025, which is a separate and distinct suit, with different parties and cause of action, to impugn the findings of the Court of Appeal; that, in any case, the respondent has appealed the said judgment and in the circumstances, the judgment is not final and cannot be the basis of re-opening a matter before this Court; that it is manifestly unfair and contrary to the interests of justice to require the respondent to continuously defend successive applications founded upon the same substratum of facts, seeking to re-open issues that have already been determined; and lastly, that litigation must, at some point, come to an end in line with the doctrine of finality of litigation; and

[6] FURTHER NOTING that to buttress its case, the respondent relies on the decisions of this Court in ***Kenya Commercial Bank Limited & Another Vs Muiri Coffee Estate Limited & 3 Others*** [2016] KESC 6 (KLR) on the common law doctrine of *res judicata*; ***Odinga Vs Independent Electoral and Boundaries Commission & 3 Others*** [2013] KESC 8 KLR; ***Outa Vs Okello & 3 Others*** [2017] KESC 25 (KLR), on instances where the Court becomes *functus officio* in a matter; ***Dari Limited & 5 Others Vs East African Development Bank*** [2023] KESC 93 (KLR); and ***Kenya Hotel Properties Limited Vs Attorney General & 5 Others*** [2022] KESC 62 (KLR) on this Court's jurisdiction to review its decision; and

[7] HAVING CONSIDERED the application, affidavits, written submissions and rival arguments by the parties, **WE NOW OPINE AS FOLLOWS:**

- i. On legal representation, the applicant contends that he lacks legal representation and therefore had to take time in drafting and filing the present application in person, which further compounded the delay. Self-representation is not unique; Rule 18 of the Supreme Court Rules, 2020, permits a party to appear in person and states as follows:

“18. Representation in Court

(1) A party may in any proceedings—

(a) appear in person;

(b) be represented by an advocate; or

(c) with the leave of the Court, be assisted by any other person chosen by the party.”

- ii. From the Court’s records, the applicant was previously represented by *Ms Pamela Ochieng of Messrs Olotch & Co. Advocates*. We are not privy to the circumstances under which the applicant parted ways with his advocate but reiterate that this Court is amenable to self-representation and has, in several instances, including in ***Johana Vs Secretary, Teachers Service Commission & Another*** [2026] KESC 13 (KLR), made necessary arrangements for and permitted parties to appear in person. However, the proposition that mere absence of legal representation can, by itself, excuse procedural defaults or delay is not tenable. Every party, represented or not, must keep to procedural timelines. In the instant case, the applicant has not demonstrated that he suffered any prejudice from his inability to secure the services of an Advocate.
- iii. On extension of time to file an application to review the Ruling of this Court, the applicant further attributes the delay to the delivery of the Judgment by the High Court (*Musyoki J.*) in ***Mae Properties Limited Vs William Olotch***, HCCC No. 331 of 2003 on 11th July 2025, which, he is convinced, exonerates him from culpability in the dispute with the respondent. In that regard, it is common ground that the dispute between

the parties was an employment issue arising from breach of fiduciary duty by the applicant in his capacity as the respondent's Managing Director, which resulted in HCCC No. 509 of 2002, **William Olotch Vs Pan African Insurance Company Limited**, and was affirmed by the Court of Appeal in Civil Appeal No. 357 of 2017, **William Olotch Vs Pan African Insurance Company Limited**. It is also common ground that HCCC No. 331 of 2003, **Mae Properties Limited Vs William Olotch**, was a resultant claim for special damages, 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.

- iv. Rule 15 (2) of the Supreme Court Rules, 2020 confers upon the Court unfettered discretion to extend the time for filing any document. The exercise of such discretion is as set out by this Court in **Nicholas Kiptoo Arap Salat Vs the Independent Electoral and Boundaries Commission & Others** [2014 KESC 12 (KLR)] 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 an 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 elections, public interest should be a consideration for extension of time.”

- v. As highlighted in par. iii above, the dispute in **HCCC No. 331 of 2003, Mae Properties Limited Vs William Olotch**, is between different parties from those in the instant application and arises from a different cause of action. The said judgment therefore cannot form the basis for extending time to seek a review of this Court's Ruling of 5th March 2021. We therefore find that the relevant period of delay is the period of more than five (5) years between the delivery of this Court's Ruling on 5th March 2021 and the filing of the instant application, and not merely the period of slightly over one (1) year since the delivery of the judgment in **HCCC No. 331 of 2003**. The delay is, in the circumstances, inordinate, and the applicant has not satisfied the principles enunciated in the **Salat Case** above, having failed to explain the delay satisfactorily.
- vi. On whether the present application is *res judicata*, the respondent contends that, being identical in form and substance to the application dated 21st August 2025, it is *res judicata*, and this Court ought to decline the invitation to re-open and re-litigate issues that have been conclusively determined; the applicant, on the other hand, has not made any reference to his previous application nor to the decision of this Court delivered on 14th November 2025. The common law doctrine of *res judicata* is the judicial principle against re-litigating disputes conclusively determined on the merits. This Court, in **Kenya Commercial Bank Limited Vs Muiri Coffee Estate Limited 7 Another** [2016] KESC 6 (KLR), addressed the doctrine of *res judicata* as follows:

“52. Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights. It would appear that the doctrine of res judicata is to apply in respect of matters of all categories, including issues of constitutional rights....”

- vii. Similarly, this Court in ***John Florence Maritime Services Limited & Another Vs Cabinet Secretary Transport & Infrastructure & 3 Others*** [2021] KESC 39 (KLR), cited with approval the Canadian case of ***Sami V Canada (Citizenship and Immigration)***, 2012 FC539 (CanLII), which set out the following pre-conditions for the doctrine of *res judicata* to apply: *first*, that the same question was decided in earlier proceedings; *second*, the judicial decision which is said to create the estoppel was final; and *third*, that the parties to the judicial decision were the same persons as the parties to the proceedings in which the estoppel was raised.
- viii. In line with the preconditions in par. vii above, we find that the applicant's Notice of Motion dated 21st August 2025 and the present application seek the same orders being: ***".... 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 appeal to this Court"***; and
- ix. The present application runs in conflict with the common law doctrine of *res judicata*; the pre-conditions for the application of the doctrine cited with approval by this Court in ***John Florence Maritime Services (Supra)*** have been met, and thus this Court declines the invitation by the applicant to revisit the same issues settled in our Ruling delivered on 14th November 2025 merely because they have been canvassed under different legal provisions.
- x. On whether this Court is now *functus officio*, having heard and determined the application to review the Court of Appeal's Ruling and

thereafter an application for extension of time both on merit and substance, we are certain that it is. In a matter, a court generally becomes *functus officio* when it has finally determined the issues before it and rendered its judgment or final ruling, thereby ending its adjudicative function in that matter. This Court, in ***Raila Odinga & 2 Others Vs Independent Electoral and Boundaries Commission & 3 Others*** [2013] KESC (KLR), adopted the principle that a court is *functus* when it has performed all its duties in a particular case; once proceedings are finally concluded, the court cannot ordinarily review or alter its decision.

- xi. This Court, in its Rulings delivered on 5th March 2021 and 14th November 2025, respectively, addressed the issues of review of the Court of Appeal's decision and extension of time. The Court considered both issues on the merits and substance and rendered its decisions. We therefore find that our adjudicative function in this matter came to an end after those Rulings were delivered. Whereas the applicant seeks to re-open the matter for further litigation, the principles of sound judicial order and finality of litigation require that litigation must, at some point, come to an end. The applicant must therefore be told, in no uncertain terms, that he has reached the end of the road as far as further proceedings before this Court on the issue are concerned.
- xii. Lastly, we consider it necessary to address the Court's quorum and the applicability of the doctrine of necessity in the circumstances of this matter. Of the seven (7) judges of the Supreme Court, three (3) have participated in the proceedings before the Court of Appeal. Mr. Justice Mohammed Warsame was part of the Bench that heard and determined the substantive appeal (*Warsame (as he then was), Musinga and Kiage, JJA*), while the Chief Justice and President of this Court, Lady Justice Martha Koome, as well as Mr. Justice William Ouko were part of the Bench that delivered the subsequent ruling declining to grant

certification to appeal to this Court (*Ouko, Koome (as they then were) and Murgor, JJ.A.*). In different circumstances, their prior participation would have led them to conclude that they would not sit and hear any part of the case involving the present parties, particularly the applicant. Their participation in the present Motion also raises the question of whether, and under what circumstances, this Court may hear and determine the matter without compromising judicial impartiality, the right to a fair hearing, and the administration of justice.

- xiii. Article 163(2) of the Constitution provides for the composition of the Supreme Court, while section 3(1) of the Supreme Court Act, 2011 governs the Court's constitution for the purposes of its proceedings. The requisite quorum is five (5) judges. Where the disqualification or recusal of judges would make it impossible to constitute the required quorum, the Court must consider whether the doctrine of necessity applies, having regard to the case's particular circumstances and the imperative of ensuring that the administration of justice is not brought to a standstill.
- xiv. In ***Jasbir Singh Rai & 3 Others Vs Tarlochan Singh Rai & 4 Others*** [2013] KESC 20 (KLR), Ibrahim SCJ, in his concurring opinion, articulated the principle underpinning the doctrine of necessity in the following terms:

“In the circumstances in which all the members of the only tribunal competent to determine a matter are subject to disqualification, they may be allowed to sit and determine the matter . . . to avoid a miscarriage of justice. This common law principle will, however, only apply in very exceptional circumstances which are required to be very clear.”

- xv. In the present matter, the Court has considered the prior participation of three (3) judges in the proceedings before the Court of Appeal. In these

exceptional circumstances, and having regard to the principles enunciated in the ***Jasbir Singh Rai case***, we find that the doctrine of necessity is applicable. Accordingly, it is imperative that one of the three (3) judges who would not otherwise have sat to determine the current Motion must sit to create the requisite quorum. Only then could this matter be determined with the finality that it requires and for the reasons we have articulated above.

- xvi. For all the reasons proffered above, we find no merit in the application, and accordingly dismiss it.
- xvii. As for costs, we are guided by this Court's pronouncement in ***Jasbir Singh Rai & 3 Others Vs Tarlochan Singh Rai & 4 Others***, [2014] KESC (KLR) that an award of costs is an exercise of judicial discretion. In light of the circumstances of this case, to close the matter with finality, we make no orders as to costs.

[8] CONSEQUENTLY, and for the reasons aforesaid, we make the following orders:

- i. The Notice of Motion dated 8th June 2026 and filed on 11th June 2026 is hereby dismissed.*
- ii. There shall be no orders as to costs.*

It is so ordered.

DATED and DELIVERED at NAIROBI this 23RD 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

.....
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**

