

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL AND TAX DIVISION
HCCOMM. MISC. APP. NO. E190 OF 2025

DIVERSEY EASTERN & CENTRAL AFRICA LIMITED.....APPLICANT

-VERSUS-

COMMISSIONER OF LEGAL SERVICES

& BOARD COORDINATION.....RESPONDENT

RULING

1. Before me is a Notice of Motion application dated 21st February 2025 filed by the applicant pursuant to the provisions of Section 32 of the Tax Appeals Tribunal Act, Rules 3 & 4 of the Tax Appeals Tribunal (Appeals to the High Court) Rules, 2015 and the inherent powers of the Court, seeking an order for extension of time within which the applicant should file and serve the Memorandum of Appeal upon the respondent.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Alfred Mwangi, the applicant's Finance Manager. Mr. Mwangi averred that the Tax Appeals Tribunal delivered its Judgment on 28th June 2024 dismissing the applicant's Appeal, and being dissatisfied with the said Judgment, the applicant lodged and served a Notice of Appeal on 26th July 2024 within the statutory timelines under Section 32 of the Tax Appeals Tribunal Act. He stated that under Rule 3 of the Tax Appeals Tribunal (Appeals to the High Court) Rules, 2015, the applicant was required to file and serve its Memorandum of Appeal by 25th August 2024, but it was unable to meet this deadline due to a major restructuring of its parent

company, following the acquisition of Diversey Holdings LLC by Solenis LLC in late 2023.

3. He contended that the aforesaid restructuring introduced new management, altered decision-making processes and implemented new operational systems, all of which disrupted the applicant's internal processes, including tracking statutory deadlines. Mr. Mwangi deposed that the applicant remains committed to pursuing the Appeal, considers it arguable with reasonable prospects of success as per the annexed draft Memorandum of Appeal, attached to his affidavit. He asserted that there has been no unreasonable delay in bringing the instant application, which was filed once the applicant's operations stabilised post-restructuring. He averred that the applicant will suffer irreparable harm if denied the opportunity to prosecute its Appeal, particularly given that the tax amounts in dispute totaling Kshs.104,402,612.00 is a substantial sum, whereas the respondent will suffer no prejudice that cannot be compensated by costs.
4. In opposition to the application, the respondent filed a replying affidavit sworn on 13th March 2025 by Ms Karen Korir, a Principal Officer of the respondent. She deposed that after the applicant failed to pursue an Appeal within time, the respondent became entitled to enforce the Tribunal's decision and commenced steps to recover the assessed taxes. She noted that the applicant was simultaneously involved in another tax dispute, **Nairobi TAT Appeal No. E999 of 2024**, where it duly filed its notice and Memorandum of Appeal within statutory timelines, demonstrating full operational capacity and control of its tax matters. She further stated that the applicant has not demonstrated how such restructuring, if any, prevented the filing of the intended Appeal, yet did not affect compliance in the subsequent **TAT Appeal No. E999 of 2024**.

5. Ms Korir averred that the applicant, being a Kenyan-incorporated company with its own independent decision-making organs, has not shown with specificity how restructuring in its parent entity obstructed the filing of the intended Appeal. She characterized the applicant's explanation as an afterthought, amounting to selective amnesia, and asserted that the documentation provided does not demonstrate any inability to make decisions or to pursue litigation. She further contended that by filing the Notice of Appeal on 26th July 2024, the applicant had already made the decision to Appeal and cannot now claim incapacity to act on that decision.
6. Ms Korir claimed that the taxes in issue have crystallized and enforcement had already commenced. She stated that refund claims are governed by statutory timelines under Section 47 of the Tax Procedures Act and extending time would prejudice the respondent by creating uncertainty and delaying recovery of lawful taxes. She averred that extension of time is an equitable remedy available only to a deserving party and that statutory timelines confer substantive rights and obligations which should not be lightly disturbed. She further averred that the delay of over seven (7) months has not been satisfactorily explained.
7. In a rejoinder, the applicant filed a further affidavit sworn on 9th July 2025 by Mr. Alfred Mwangi, the applicant's Finance Manager. Mr. Mwangi averred that the respondent's reliance on **Nairobi TAT Appeal No. E999 of 2024** is misplaced. He explained that the said Appeal was handled entirely by the applicant's long-standing Tax Advisor, Ernst & Young LLP, who had been involved in that matter before it crystallized into an Appeal, thus it did not require new instructions or approvals from the applicant's parent company, nor did it require the engagement of external Counsel. He further averred that the

Tax Advisor also assisted in filing the Notice of Appeal in this matter, but could not file an Appeal before the High Court, as it is not a law firm. He deposed that although the Notice of Appeal was filed in time, the applicant could not proceed to file the substantive Appeal documents without engaging outside Counsel.

8. Mr. Mwangi stated that the intended High Court Appeal required the applicant to procure external Advocates, obtain internal approvals for their appointment and secure budgetary approvals for legal fees. He contended that these approvals became more extensive and time-consuming due to restructuring arising from the acquisition of Diversey Holdings LLC by Solenis LLC. He explained that under the global structure, decisions on material tax matters begin at the local level, are escalated to regional management and finally to the global team for approval, including the VP Global Tax, the Chief Financial Officer, and potentially the CEO and the Board. He therefore asserted that this centralized structure and post-merger reorganization significantly affected internal workflows and contributed to the delay in filing the Appeal.
9. Mr. Mwangi stated that the respondent has not demonstrated how granting the orders being sought herein will affect national budgetary allocation and asserted that such an argument implicitly acknowledges the validity of the applicant's refund claim, making it even more necessary for the intended Appeal to be heard on its merits. He reiterated that the post-merger restructuring had significant operational implications, including the need to establish global strategic leadership, realign corporate functional teams and reorganize regional executive leadership. He explained that these changes demonstrate that the applicant does not operate independently of its parent company and that the internal restructuring materially affected its ability to procure timely approvals, thus impeding the timely filing of the intended Appeal. Mr. Mwangi stated that

the intended Appeal raises pure questions of law under Sections 23, 29, 31 & 47 of the Tax Procedures Act and Sections 15, 16, 42 & 43 of the Income Tax Act, thus meeting the threshold under Section 56(2) of the Tax Procedures Act.

10. The instant application was canvassed by way of written submissions. The applicant's submissions were filed by the law firm of Hamilton Harrison & Mathews Advocates on 10th July 2025, whereas the respondent's submissions were filed on 24th June 2025 & 11th August 2025 by Ngetich Kipngeno, Advocate.
11. Mr. Ruto, learned Counsel for the applicant relied on the principles governing extension of time as set out by the Supreme Court in the case of **Salat v Independent Electoral and Boundaries Commission & 7 others** [2014] KESC 12 (KLR), and submitted that the delay in filing the intended Appeal was neither inordinate nor unexplained. He argued that the applicant was unable to file the Memorandum of Appeal within time due to a restructuring process within its parent company that disrupted internal decision-making, including approval of external Counsel, which caused delays until 10th February 2025, when external Counsel was formally appointed. He cited the Court of Appeal cases of **Cecilia Wanja Waweru v Jackson Wainaina Muiruri & Another** [2014] eKLR and **Vishva Stone Suppliers Ltd v RSR Stone** [2006] Ltd [2020] KECA 361 (KLR), and asserted that the explanation given constitutes a plausible and satisfactory explanation.
12. Counsel stated that the applicant will suffer irreparable harm if not granted leave to pursue an Appeal, noting that the dispute involves a substantial tax sum of Kshs.104,402,612.00 and exposes it to the risk of double taxation. He argued that the respondent will suffer no prejudice that cannot be compensated by costs if the instant application is allowed. Mr. Ruto cited the Court of Appeal case of

Sokoro Savings & Credit Co-operative Society Ltd v Mwamburi [2023] KECA 381 (KLR) and stated that the respondent's claims regarding budgetary constraints are matters for determination in the Appeal and do not amount to legal prejudice capable of defeating an application for extension of time. Counsel relied on the case of **Samuel Mwaura Muthumbi v Josephine Wanjiru Ngugi & another** [2018] KEHC 8788 (KLR) and contended that the applicant's intended Appeal is arguable, thus the instant application ought to be allowed.

13. Mr. Ngetich, learned Counsel for the respondent cited the provisions of Section 32(1) of the Tax Appeals Tribunal Act and submitted that although the applicant filed the Notice of Appeal on 26th July 2024 within the prescribed period, it failed to lodge the Memorandum of Appeal within thirty (30) days thereafter, as required by Rule 3 of the Tax Appeals Tribunal (Appeals to the High Court) Rules, 2015. He further submitted that in order for the application herein to be allowed, the applicant must satisfy the provisions of Rule 4 of the Tax Appeals Tribunal (Appeals to the High Court) Rules by demonstrating absence from Kenya, sickness, or other reasonable cause and must meet the broader principles governing extension of time as outlined in the case of **Commissioner of Domestic Taxes v Mayfair Insurance Company Ltd** [2017] KEHC 2516 (KLR). He argued that the applicant has not demonstrated any reasonable cause for the delay.
14. Counsel contended that the applicant's reliance on restructuring of its parent company, Diversey Holdings LLC, is unpersuasive because documentary evidence shows the acquisition occurred on 8th March 2023, well before the applicant filed another Appeal before the Tribunal in **Nairobi TAT Appeal No. E292 of 2023** and later filed a Notice of Appeal and a substantive Appeal in

Nairobi TAT Appeal No. E999 of 2024. He asserted that by filing the Notice of Appeal on 26th July 2024, the applicant clearly made a decision to Appeal and cannot now claim it was unable to do so. He maintained that nothing prevented the applicant from filing the Memorandum of Appeal thereafter and the failure to act for a period of seven (7) months amounts to selective and unjustified indolence. He relied on the cases of *inter alia*, **Central Rift Valley Water Development Agency v Kenya Revenue Authority & another** [2022] KEHC 16893 (KLR) and submitted that the Court should not aid an indolent litigant and that the applicant's seven-month delay is both inordinate and unexplained.

15. Mr. Ngetich further submitted that no sufficient grounds have been shown to justify interfering with statutory timelines. He challenged the evidentiary value of the applicant's assertions regarding an alleged existing engagement or understanding with Ernst & Young LLP and contended that the applicant has produced no documentary proof to establish the existence, scope, or terms of such an engagement, including whether the Tax Advisor's mandate was limited to representation before the Tax Appeals Tribunal. Counsel stated that the documents marked "AM-1" show that the applicant is a Kenyan company capable of making its own decisions and that there is no evidence that the intended Appeal required approval from Solenis LLC or any of its global officers. He argued that the applicant has not provided details or timelines of any alleged approval process, making it impossible to assess whether such a process contributed to the delay.

ANALYSIS AND DETERMINATION.

16. I have considered the application filed herein, the grounds on the face of it, and the affidavits filed in support thereof, the replying affidavit by the respondent

and the written submissions by Counsel for the parties. The issue that arises for determination is whether the application for leave to file an Appeal out of time is merited.

17. The applicant averred that it filed a Notice of Appeal on 26th July 2024 within the statutory timeframe, demonstrating its clear intention to challenge the decision of the Tax Appeals Tribunal. It however contended that the filing of the substantive Appeal was delayed due to a major restructuring of its parent company, Diversey Holdings LLC, following its acquisition by Solenis LLC in late 2023. The applicant asserted that the said restructuring disrupted internal workflows, introduced centralized approval processes for key decisions including the engagement of external Counsel and altered management structures, thereby affecting its ability to file the Memorandum of Appeal promptly. The applicant submitted that the intended Appeal raises purely questions of law under Sections 23, 29, 31, and 47 of the Tax Procedures Act, as well as Sections 15, 16, 42, and 43 of the Income Tax Act, meeting the threshold for an arguable Appeal. It maintained that the delay was neither deliberate nor excessive as the application for extension of time was filed promptly once internal operations had stabilized.
18. The respondent's case was that the applicant, being a Kenyan-incorporated company with independent decision-making organs, has not provided sufficient evidence to demonstrate that restructuring materially prevented it from filing the Appeal. It pointed out that the applicant successfully pursued another Tax Appeal being **Nairobi TAT Appeal No. E999 of 2024** within statutory timelines, demonstrating operational capacity and control. It further stated that the Notice of Appeal filed on 26th July 2024 indicated that the applicant had already decided to appeal and cannot now claim incapacity to act. The

respondent further asserted that the delay of over seven (7) months has not been adequately explained and that allowing the extension could create uncertainty in revenue administration, delay recovery of lawful taxes, and undermine the finality of Tribunal decisions. It argued that restructuring of a parent company without specific evidence showing halted internal processes, does not constitute reasonable cause for extension of time.

19. Appeals from decisions of the Tax Appeals Tribunal to the High Court are provided for under Section 32 of the Tax Appeals Tribunal Act. Section 32(1) states that –

A party to proceedings before the Tribunal may, within thirty days after being notified of the decision or within such further period as the High Court may allow, Appeal to the High Court, and the party so Appealing shall serve a copy of the notice of Appeal on the other party.

20. The above position is reiterated in Section 53 of the Tax Procedures Act which provides that -

A party to proceedings before the Tribunal who is dissatisfied with the decision of the Tribunal in relation to an Appealable decision may, within thirty days of being notified of the decision or within such further period as the High Court may allow, Appeal the decision to the High Court in accordance with the provisions of the Tax Appeals Tribunal Act (Cap. 469A).6.

21. Pursuant to the above provisions, Rules 3 & 4 of the Tax Appeals Tribunal (Appeals to The High Court) Rules, 2015 provide as follows–

3. Time for filing of Memorandum of Appeal

The appellant shall, within thirty days, after the date of service of a notice of Appeal under section 32(1), file a Memorandum of Appeal with the Registrar and serve a copy on the respondent.

4. Extension of time for filing Memorandum of Appeal

The Court may extend the time specified in rule 3 if the Court is satisfied that, owing to absence from Kenya, sickness, or other reasonable cause, the appellant was unable to file the Memorandum of Appeal within that period and that there has been no unreasonable delay on the part of the appellant

22. From the foregoing provisions, it is clear that the Court's discretion to extend time for filing of an Appeal from a decision of the Tax Appeals Tribunal may only be invoked where the applicant demonstrates that failure to file the Memorandum of Appeal within the statutory period was occasioned by absence from Kenya, illness, or another reasonable cause, and that the application seeking extension has been made without undue delay.
23. The Supreme Court in the case of **Salat v Independent Electoral and Boundaries Commission & 7 others** (supra), set out the considerations to guide Courts in exercising discretion in cases seeking extension of time as hereunder –

This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the underlying principles that a Court should consider in exercise of such discretion:

- 1. 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;**
- 2. a party who seeks...extension of time has the burden of laying a basis to the satisfaction of the Court;**
- 3. whether the Court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;**
- 4. [where] there is a reasonable [cause] for the delay, the delay should be explained to the satisfaction of the Court;**
- 5. whether there will be any prejudice suffered by the respondents if the extension is granted;**
- 6. whether the application has been brought without undue delay; and,**
- 7. whether in certain cases, like election petitions, public interest should be a consideration for extending time.**

24. The applicant's application is not premised on absence from Kenya or illness, but rather on what it terms as other reasonable cause, namely internal disruptions resulting from the corporate restructuring that followed the acquisition of its parent company, Diversey Holdings LLC, by Solenis LLC. According to the applicant, this restructuring altered its governance and approval workflows, causing delays in obtaining the internal authorizations required to secure external Counsel and file the intended Appeal.

25. It is noteworthy that although the applicant is a Kenyan-incorporated company operating locally, its parent company, Diversey Holdings LLC, is an international entity that was in the process of being acquired by another multinational, Solenis LLC, in late 2023. While the applicant has not shown

when the acquisition was concluded, when it began seeking approval from its parent company to instruct Counsel for the intended Appeal, or when such approval was ultimately granted, this Court takes Judicial Notice of fact that corporate acquisitions are inherently complex and often prolonged. They commonly span several months, influenced by factors such as due diligence, regulatory approvals, financial audits, valuation exercises, negotiation of terms and post-merger integration planning. Each of these stages demands careful attention to legal and governance requirements, therefore any interruption or complication can naturally lead to delays.

26. In the circumstances, this Court is persuaded that an acquisition of this nature is not only protracted and demanding, but is also likely to cause significant disruption to internal management structures and operational stability. Such corporate transitions frequently divert the attention of senior management to acquisition-related tasks including engagements with Auditors, Legal Advisors and Regulatory bodies, thereby affecting the routine running of subsidiary entities. The respondent however contended that despite these alleged disruptions, the applicant successfully pursued another tax matter being, **Nairobi TAT Appeal No. E999 of 2024**, where it filed both the Notice and Memorandum of Appeal within the statutory timelines, thereby demonstrating its continued operational capacity and effective management of its tax affairs.
27. The applicant however maintained that **TAT Appeal No. E999 of 2024** was managed exclusively by its long-standing Tax Advisor, Ernst & Young LLP, who had been involved in that dispute well before it matured into an Appeal, as is evident from the pleadings filed in **TAT Appeal No. E999 of 2024** attached to the respondent's replying affidavit, thus it did not require new instructions or approvals from its parent company, nor did it require the engagement of

external Counsel. The applicant further stated that Ernst & Young LLP equally assisted in lodging the Notice of Appeal in this matter, but could not file an Appeal before the High Court since it is not a law firm. In my considered view, the explanation by the applicant is consistent with the provisions of Order 9 Rule 1 of the Civil Procedure Rules, 2010, which provides that –

Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by an advocate duly appointed to act on his behalf:

Provided that -

- a) any such appearance shall, if the court so directs, be made by the party in person; and***
- b) where the party by whom the application, appearance or act is required or authorized to be made or done is the Attorney-General or an officer authorized by law to make or to do such application, appearance or act for and on behalf of the Government, the Attorney-General or such officer, as the case may be, may by writing under his hand depute an officer in the public service to make or to do any such application, appearance or act.***

28. Furthermore, Order 9 Rule 2 of the Civil Procedure Rules, 2010, addresses the issue of recognized agents and provides that -

The recognized agents of parties by whom such appearances, applications and acts may be made or done are -

- a) subject to approval by the court in any particular suit persons holding powers of attorney or an affidavit sworn by the party authorizing them to make such appearances and applications and do such acts on behalf of parties;***
- b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts;***
- c) in respect of a corporation, an officer of the corporation duly authorized under the corporate seal.***

29. Given the circumstances herein, I am inclined to agree with the applicant that although a Notice of Appeal was lodged within time, the applicant was unable to file the substantive Appeal documents without first engaging external Counsel.
30. Accordingly, while the respondent raises valid points regarding the need for timely compliance and finality in tax matters, I am satisfied that the applicant has provided a credible and *bona fide* explanation for the seven-month delay, which include the documented restructuring process that disrupted internal approvals which delayed the engagement of external Counsel. Further, by filing the Notice of Appeal within the statutory period, the applicant demonstrated a genuine intention to prosecute its Appeal. Upon reviewing the draft Memorandum of Appeal annexed to the supporting affidavit, I am persuaded that it raises arguable points of law, including the interpretation of Section 31(4) of the Tax Procedures Act concerning the commencement of limitation periods

and the interpretation of Section 47 of the Tax Procedures Act regarding the implication of the respondent's failure to process VAT refund claims within the prescribed timelines.

31. I am not persuaded that the respondent would suffer any prejudice that cannot be compensated by an award of damages should the instant application be allowed. Further, equity favors the resolution of disputes on their merits rather than on procedural technicalities, particularly where a party has acted in good faith and has shown a reasonable cause for the delay. I am therefore satisfied that the applicant's failure to file the substantive Appeal within time was not as a result of negligence, but stemmed from genuine corporate and operational challenges that were temporary in nature which have since been addressed.
32. This Court finds that the applicant has established sufficient grounds to warrant being granted an order for extension of time within which to file the intended Appeal.
33. In the end, I find that the instant application is merited. It is allowed in the following terms –
 - i) I hereby grant extension of time within which the applicant shall file and serve and file its Memorandum of Appeal;**
 - ii) The applicant shall file and serve its Memorandum of Appeal within fourteen (14) days from today;**
 - iii) Failure to comply to comply with Order (ii) above will lead to an automatic discharge of the Orders made herein; and**
 - iv) Costs of the instant application shall abide the outcome of the Appeal.**

It is so ordered.

DELIVERED, DATED and SIGNED at NAIROBI on this 14th day of November 2025. Ruling delivered through Microsoft Teams Online Platform.

**NJOKI MWANGI
JUDGE**

In the presence of:

Mr. Ruto for the applicant

Mr. Kipng'etich for the respondent

Ms B. Wokabi – Court Assistant.