



**Attorney General & another v Law Society of Kenya & another; East Africa Law Society & another (Interested Parties) (Civil Application E352 of 2025) [2025] KECA 1991 (KLR) (21 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1991 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E352 OF 2025  
F SICHALE, JA  
NOVEMBER 21, 2025**

**BETWEEN**

**THE ATTORNEY GENERAL ..... 1<sup>ST</sup> APPLICANT**

**THE CABINET SECRETARY, MINISTRY OF EAST AFRICAN COMMUNITY,  
ASALS & REGIONAL DEVELOPMENT ..... 2<sup>ND</sup> APPLICANT**

**AND**

**THE LAW SOCIETY OF KENYA ..... 1<sup>ST</sup> RESPONDENT**

**MOKUA ZABLON MURUKA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**THE EAST AFRICA LAW SOCIETY ..... INTERESTED PARTY**

**THE JUDICIAL SERVICE COMMISSION ..... INTERESTED PARTY**

*(Being an Application for Extension of Time to file a Notice of Appeal against the judgment of the High Court of Kenya (E. Mwita J) dated 31st January 2025 in Nairobi High Court Constitutional & Human Rights Petition No. E233 of 2024)*

**RULING**

1. The Attorney General and The Cabinet Secretary, Ministry of East African Community, ASALs and Regional Development (“the applicants”) herein have vide a motion on notice application dated 27<sup>th</sup> February 2025, brought pursuant to the provisions of Articles 27 (1), 40, 50 (1) and 159 (2) (a), (b), (d) and (e) of *akn ke act 2010 constitution the Constitution* of Kenya, Sections 3 (2), 3A and 3B of the *akn ke act 1977 15 Appellate Jurisdiction Act*, Rules 4 and 77 (2) of the Court of Appeal Rules and all



other enabling provisions of the Law invoked the jurisdiction of this Court sitting as a Single Judge seeking the following orders:

- i. Spent.
  - ii. This Honourable Court be pleased to extend time with which (sic) the Notice of Appeal was to be filed and pleased to admit the same out of time.
  - iii. Pursuant to the grant of prayer 2 above, this Honourable Court be pleased to deem the Notice of Appeal dated and filed on 25<sup>th</sup> February 2025 and annexed to the instant application as having been duly lodged and filed on time.
  - iv. In the alternative and without prejudice to prayers (2) and (3) above, this Honourable Court be pleased to grant the applicants leave to file the Notice of Appeal out of time.
  - v. This Honourable Court do make such further order (s) and or direction (s) as it may deem necessary in the circumstances to meet the ends of justice.
  - vi. The costs of this application be in the cause.”
2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by Samuel Odiwour Kaumba a Deputy Chief State Counsel in the Office of the Attorney General and Department of Justice who deposed inter alia that vide a judgment delivered on 31<sup>st</sup> January 2025, the Court quashed the letter dated 18<sup>th</sup> April 2024, by the Cabinet Secretary, Ministry of East Africa Community, Arid and Semi-Arid Lands and Regional Development, forwarding the name of Mokuu Zablon Muruka to the Secretary General, East Africa Community for appointment as a Judge of the East African Court of Justice.
3. That, on 3<sup>rd</sup> February 2025 the Principal Secretary, State Department for East African Community was notified of this decision and on 11<sup>th</sup> February 2025, the Attorney General notified the Head of Public Service of the decision who indicated a preliminary view against appealing the decision in light of the merits of the decision and on 25<sup>th</sup> February 2025, the Attorney General received instructions directing that an appeal be preferred against the decision.
4. That, immediately upon receipt of instructions, he prepared a Notice of Appeal which was lodged in the registry on 25<sup>th</sup> February 2025, leading to a delay of about 10 days which was neither inordinate nor intentional as the same was excusable due to inability to obtain an appointment for a decision merit analysis with the Presidency.
5. The 2<sup>nd</sup> respondent Zablon Muruka Mokuu filed an affidavit sworn 21<sup>st</sup> July 2024 (sic) in support of the motion where he deposed inter alia that the applicants had given a plausible and satisfactory explanation for the delay; namely that they received instructions to appeal on 25<sup>th</sup> February 2025 and that there was inability to obtain immediate appointment with the Presidency and the Cabinet Secretary for a decision merit analysis as they were in Addis Ababa Ethiopia, for the Africa Heads of State meeting.
6. He further deposed that the applicants had an arguable appeal and that none of the respondents (including himself), would suffer substantial prejudice if the instant application was allowed.
7. On the other hand, the motion was opposed by the 1<sup>st</sup> respondent and the 1<sup>st</sup> interested party vide replying affidavits sworn on 4<sup>th</sup> July 2025 and 8<sup>th</sup> October 2025, by Florence Muturi and David Sigano, Chief Executives of the 1<sup>st</sup> respondent and the 1<sup>st</sup> interested party respectively, who deposed inter alia



that from the CTS records, whereas the instant motion was dated 27<sup>th</sup> February 2025, the same was in fact filed on 11<sup>th</sup> June 2025.

8. It was thus deposed the application was fundamentally defective and incompetent having been filed out of time and in any event without leave of the Court and that further no justifications and or reasons had been advanced by the applicants for lodging the application out of time.
9. There was no response on part of the 2<sup>nd</sup> interested party despite having been served with a copy of the hearing notice on 6<sup>th</sup> October 2025, at 1:38PM.
10. It was submitted for the applicants that the period of delay herein was not inordinate and was explainable based on cogent reasons since it was not until 25<sup>th</sup> February 2025, that the instructions to appeal were obtained and that the Notice of Appeal was subsequently filed on the same day leading to a delay of about 10 days, which was not inordinate in light of the circumstances of this case.
11. On prejudice it was submitted that no prejudice would be occasioned to the respondents if the application were to be allowed since no nomination and appointment had been done to the position of East African Court of Justice and that further, the Court was still operational and quorate even in the absence of Kenya's nominee.
12. On the hand, it was submitted for the 1<sup>st</sup> respondent that the instant application had been brought 4 months since the Notice of Appeal dated 25<sup>th</sup> February 2025 was filed and no explanation had been given at all for this inordinate delay.
13. It was further submitted that due to the applicants failure to lodge and serve the request for typed proceedings, the 1<sup>st</sup> respondent had filed an application dated 12<sup>th</sup> May 2025, seeking to have the Notice of Appeal herein to be deemed withdrawn struck out for failure to file an appeal within 60 days and that as such, the application should be dismissed. For this proposition reliance was placed on the case of RRK V JMN (Civil Application 81 of 2018) [2024] KECA 1056 (KLR).
14. On prejudice, it was submitted that the 1<sup>st</sup> respondent would be prejudiced if the orders sought are issued since further delay in resolving the issue of nomination of Judge by the Republic of Kenya had grounded the East African Court of Justice which was currently not sitting, which matter was of immense public interest.
15. Finally, it was submitted for the 1<sup>st</sup> interested party that the delay in filing the Notice of Appeal was both substantial and unexplained since the judgment was delivered on 31<sup>st</sup> January 2025, yet the Notice of Appeal was not filed until 11<sup>th</sup> June 2025, well beyond the prescribed period of 14 days as required by the Rules.
16. It was further submitted that though the instant application was dated 27<sup>th</sup> February 2025, it was filed on 11<sup>th</sup> June 2025 and again no credible reason had been advanced to account for this lapse.
17. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the 1<sup>st</sup> and 2<sup>nd</sup> respondent's replying affidavit, the 1<sup>st</sup> interested party's replying affidavit, the rival submissions by the parties, the cited authorities and the law.
18. The principles upon which this Court exercises its discretion pursuant to Rule 4 to extend time or not have now taken a well beaten path. The Court has wide and unfettered discretion in deciding whether to extend time or not. However, in exercising its discretion, the Court should do so judiciously.



19. See *Mwangi vs. Kenya Airways Limited* (2003) KLR 486 where this Court stated thus:

“Over the years, the Court has set out guidelines on what a single Judge should consider when dealing with an application for extension of time under Rule 4 of the Rules. For instance, in *Leo Sila Mutiso V Rose Hellen Wangari Mwangi* (Civil Application No. Nai 255 of 1997 (unreported), the Court expressed itself thus;

“It is now well settled that the decision whether or not to extend time for appealing is essentially discretionary. It is also well settled that in general, the matters which this Court takes into account in deciding whether to grant an extension of time are; first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”

18. In the instant case and as regards the length of the delay, the impugned judgment was delivered on 31<sup>st</sup> January 2025. The Notice of Appeal therefore ought to have been filed on 14<sup>th</sup> February 2025. In the instant case however, the same was not done until 25<sup>th</sup> February 2025. There has therefore been a delay of about 11 days which from the circumstances of this case I do not consider to be inordinate.

19. Turning to the reasons preferred for the delay, it was contended that the applicants only received instructions to appeal against the impugned decision on 25<sup>th</sup> February 2025 and that it was not possible to receive the instructions in due time due to the Africa’s

Heads of State meeting in Addis Ababa, in which Kenya’s candidature for the Chairmanship of the African Union Commission was at stake and required personal direction and attention of the President and the Cabinet Secretary during and immediately after the nomination day.

18. I consider the reasons given for the delay to be reasonable plausible as the contention by the applicants that it was not possible to receive the instructions from in due time due to the Africa’s Heads of State meeting in Addis Ababa, in which Kenya’s candidature for the Chairmanship of the African Union Commission was at stake and required personal direction and attention of the President and the Cabinet Secretary during and immediately after the nomination day have not been controverted by any of the parties.

19. Given the circumstances of this case, I consider the reasons given for the delay to be reasonable plausible and ultimately therefore, I am of the considered opinion that the delay herein has sufficiently been explained to the satisfaction of this Court.

20. As to the arguability or otherwise of the intended appeal, I cannot make a determination on this issue sitting as a Single Judge and I will therefore not delve further on the same.

21. Finally on prejudice, it has not been demonstrated to the satisfaction of this Court, the prejudice that the respondents will suffer if the instant motion is allowed since no nomination and appointment had been done to the position of Judge of East African Court of Justice and the Court is still operational and quorate even in the absence of Kenya’s nominee.

22. On the other hand, if the instant motion is not allowed, the applicants will have been completely shut out from the seat of justice.



23. Taking into totality all the circumstances of this case, I am of the considered view that the applicants have demonstrated and satisfied the existence of the principles for consideration in the exercise of my unfettered discretion pursuant to Rule 4 of this Court to extend time.
24. Accordingly, the applicant's motion dated 27<sup>th</sup> February 2025, is merited and the same is hereby allowed as prayed. The applicants shall proceed to file the intended appeal within a period of 30 days from the date of this ruling, failure to which these orders shall stand vacated.
18. The costs of this motion shall abide the outcome of the intended appeal.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF NOVEMBER, 2025.**

**F. SICHALE**

..... **JUDGE OF APPEAL**

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

Signed Deputy Registrar

