

**IN THE COURT OF APPEAL
AT NAIROBI**

(CORAM: TUIYOTT, JA (IN CHAMBERS))

CIVIL APPLICATION NO. NAI E241 OF 2025

BETWEEN

SUKEN INTERNATIONAL LIMITED.....APPLICANT

AND

MINISTRY OF HEALTH.....1ST RESPONDENT
ATTORNEY GENERAL.....2ND RESPONDENT

*(Being an application seeking leave to appeal from the Judgment of the High Court of Kenya at Nairobi (**Mwita, J.**) delivered on 30th June 2023*

in

HC. Commercial Suit No. 6 of 2021)

RULING

- [1] Rule 4 of the Court of Appeal Rules, 2022 empowers this Court to extend time for doing an act authorized or required by the Rules or limited by the decision of this Court or of a superior court below.
- [2] The applicant in a notice of motion dated 11th April 2025 invokes that jurisdiction and seeks leave to appeal against the decision of **Justice E. C. Mwita** on 30th June 2023 in **Nairobi HCCC Commercial Suit No. 006 of 2021.**
- [3] The delay in filing the notice of appeal is explained in the affidavit of **Paul Otieno** sworn on 11th April 2025. He deposes that: after delivery of the judgment, his advocate on record

failed to promptly

inform him of the outcome; he promptly instructed his advocate to file an appeal but the advocate failed to do so within the prescribed time; he faced financial difficulties, further delaying his ability to seek new legal representation; and upon his finances improving, he terminated the services of his erstwhile advocate and instructed his current advocates Messrs. Wachira & Mumbi Advocates.

[4] The motion is opposed by **Dr. Ouma Oluga**, the Principal Secretary for the State Department for Medical Services at the Ministry of Health in a replying affidavit sworn on 22nd October 2025. In a nutshell he asserts that the delay of 2 years is inordinate and insufficiently explained and no evidence is presented by the applicant to corroborate the alleged financial constraints.

[5] This Court has considered the submissions filed on behalf of the parties.

[6] The discretion of a judge to extend time under Rule 4 is exercised judiciously within settled principles. These are; the length of the delay; the reasons for the delay; (possibly) the chances of the appeal succeeding if the application is granted; and prejudice to the respondent if the application is granted. See

Leo Sila Mutiso v Rose

Hellen Wangari Mwangi - Civil Application No. Nai 251 of 1997.

[7] The delay herein is attributed to two factors: lack of action on the

part of the applicant's former advocate and financial constraints on the part of applicant hampering the prompt instructions of another

advocate. While this could in certain instances be plausible reasons, a party seeking to benefit from such reasons must demonstrate them. Here, we do not have any evidence whatsoever about the applicant urging its former advocate to act or in the very least complaining about his inaction. The applicant is the owner of its litigation and must demonstrate that it was a diligent litigant who has suffered misfortune at the hands of inattentive representation. This has not been demonstrated at all.

[8] Regarding financial incapacity, no material is placed before the Court to prove this.

[9] Ultimately, the delay of 2 years, no doubt inordinate, has not been sufficiently explained.

[10] The notice of motion dated 11th April 2025 lacks merit and is hereby dismissed with costs.

Dated and delivered at Nairobi this 30th day of January 2026.

F. TUIYOTT

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.