

**IN THE COURT OF
APPEAL AT NAIROBI**

(CORAM: L.M. NDOLO, JA (IN CHAMBERS))

**CIVIL APPEAL (APPLICATION) NO. E233 OF
2025**

BETWEEN

BALRAJ SINGH BHACHU.....APPLICANT

AND

MANJIT KAUR REHAL.....RESPONDENT

(Being an application for leave to file a supplementary record of appeal out of time in appeal from the ruling and order of Chemitei, J. delivered on 25th July 2024

in

Nairobi HC Succession Cause No 230 of 2020)

RULING

1. By his notice of motion dated 24th July 2025, the applicant seeks leave to file a supplementary record of appeal out of time. The applicant further asks that the supplementary record of appeal dated 22nd July 2025, be deemed duly filed. The motion is supported by the applicant's own affidavit sworn on even date.
2. In support of his application, the applicant states that at the time of filing the original record of appeal, the superior court had not issued him with a certified copy of the order

forming

the subject matter of the appeal, despite paying for it as early as August 2024.

3. As at April 2025, the order had not been issued, prompting the applicant to write to the Registrar of this Court, explaining his predicament, while asserting his intention to file the supplementary record of appeal. The applicant states that he filed the supplementary record within three (3) days of receipt of the order from the superior court.
4. The respondent, who was duly served, did not respond to the application either by way of a replying affidavit, grounds of opposition or submissions. The application is therefore unopposed.
5. I have considered the application, the supporting affidavit and its annexures as well as the submissions made by the applicant. The power of this Court to extend time is donated by **rule 4** of the Rules of the Court which provides that:

The Court may, on such terms as may be just, by order, extend the time limited by these Rules, or by any decision of the Court or of a superior court, for doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.

6. Extension of time is a discretionary equitable remedy which is granted on a case by case basis, upon examination of the length

of delay, the reason for the delay, prejudice to the respondent and arguability of the appeal.

7. In his written submissions, the applicant relied on the Supreme Court decision in **Nicholas Kiptoo Salat vs. Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR** where the applicable principles in determining a plea for extension of time were established in the following terms:

- 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 who seeks for 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 to be suffered by the respondent if the extension is granted;**
- f. Whether the application has been brought without undue delay; and**
- g. Whether in certain cases, like in election petitions, public interest should be a**

consideration for extending time.

8. In this case, it is evident that the delay in filing the supplementary record of appeal was occasioned by delay by the superior court in availing the order to the applicant. It is also evident that upon receiving the order, the applicant moved swiftly to file the application for extension of time, together with the supplementary record of appeal.
9. Instructively, the respondent did not respond to the application and there is no conceivable prejudice to him because the appeal is yet to be listed for hearing.
10. In the circumstances, I will allow the application for extension of time and admit the supplementary record of appeal dated 22nd July 2025 as duly filed, subject to payment of applicable court fees.
11. The applicant shall serve the supplementary record of appeal upon the respondent within fourteen (14) days from the date of this ruling.
12. The costs of the application will be in the appeal.

Dated and delivered at Nairobi this 6th day of March, 2026.

L.M. NDOLO

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JUDGE OF APPEAL

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

Signed
DEPUTY REGISTRAR