



British Broadcasting Corporation (BBC) v Wetangula (Civil Appeal (Application) E152 of 2025) [2026] KECA 415 (KLR) (27 February 2026) (Ruling)

Neutral citation: [2026] KECA 415 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E152 OF 2025
J MOHAMMED, JA
FEBRUARY 27, 2026**

BETWEEN

BRITISH BROADCASTING CORPORATION (BBC) APPLICANT

AND

SENATOR MOSES MASIKA WETANGULA RESPONDENT

(An application for extension of time to file and serve a Supplementary Record of Appeal in an intended appeal against the Ruling and Orders of the High Court (C. Meoli J.) dated 5th October 2023 in Milimani HCCC No. 444 of 2015)

RULING

Background

1. British Broadcasting Corporation (BBC) (the applicant) has moved this Court by way of Notice of Motion dated 16th April 2025 seeking extension of time to file and serve a Supplementary Record of Appeal.

Senator Moses Masika Wetangula (as he then was) is the respondent herein.

2. The application is premised on Rule 4 of the Court of Appeal Rules which grants this Court discretion to extend time for the doing of any act authorized or required by the Rules.

3. The principles governing the exercise of that discretion are well settled.

In *Leo Sila Mutiso v Hellen Wangari Mwangi* [1999] 2 EA 231, this Court stated that in exercising its discretion under Rule 4, it considers the length of the delay, the reason for the delay, the chances of the appeal succeeding, and the degree of prejudice to the respondent.

4. These principles were reaffirmed in *Fakir Mohamed v Joseph Mugambi & 2 Others* [2005] eKLR, where the Court emphasized that the discretion must be exercised on reason and principle, not



- caprice. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* [2014] eKLR underscored that extension of time is an equitable remedy and that courts must balance procedural discipline with substantive justice.
5. It is not disputed that the Notice of Appeal was lodged within time. The Record of Appeal was filed accompanied by a Certificate of Delay. Upon being served with the respondent's application to strike out the appeal on account of omission of certain documents, the applicant promptly filed the present motion seeking leave to introduce the omitted documents by way of a Supplementary Record of Appeal. Determination
 6. The principal issue for determination is whether the omission of certain documents from the Record of Appeal renders the appeal fatally incompetent and, if not, whether the applicant has satisfied the threshold for extension of time under Rule 4.
 7. Rule 89 of the Court of Appeal Rules prescribes the mandatory contents of a Record of Appeal while Rule 90 provides a mechanism for introducing omitted documents through a Supplementary Record. The modern jurisprudence of this Court reflects a purposive and pragmatic approach to procedural omissions.
 8. In *Baobab Beach Resort v Duncan Muriuki* [2014] eKLR, this Court held that omission of primary documents is curable through the filing of a supplementary record. Likewise, in *Landbank Real Estate Investment Trust Ltd v Standard Chartered Bank Kenya Ltd* [2019] eKLR, the Court acknowledged the paradigm shift introduced by the current Rules, which permit rectification of omissions in furtherance of substantive justice.
 9. More recently, in *Livoi v Macnaughton Limited*, Civil Appeal (Application) No. E024 of 2024, this Court reaffirmed that the discretion under Rule 4 must be exercised in a manner consistent with the overriding objective of the Rules, favouring a purposive interpretation that advances substantive justice, particularly where procedural defects are curable and no irreparable prejudice is demonstrated.
 10. The respondent relied on *Pepo Construction Co. Ltd v Carter & Sons Ltd* (2000) KECA 275 (KLR) and *Grace Wahu Njoroge v John Patrick Machira t/a Machira & Co. Advocates* (2009) KECA 99 (KLR). Those decisions were rendered under a different procedural regime which did not contain the curative framework now embodied in Rule 90. To the extent that they suggested omission of primary documents was invariably fatal, they must be understood within the context of the Rules then in force.
 11. In considering this application under Rule 4, the Court must evaluate the length of delay, the reason for the delay, the arguability of the intended appeal, and the degree of prejudice to the respondent. The delay in the present matter is not inordinate, particularly in light of the Certificate of Delay on record. The explanation offered for the omission of the documents is reasonable and does not disclose indolence or deliberate disregard of the Rules. Without making definitive findings on the merits, I am satisfied that the intended appeal is not frivolous and raises arguable issues worthy of consideration by this Court.
 12. Further, the documents sought to be introduced were already in existence and within the applicant's possession. No prejudice has been demonstrated that cannot be adequately compensated by an award of costs. The omission is therefore curable.
 13. In the circumstances, and guided by the settled principles governing extension of time and the purposive approach endorsed in the recent jurisprudence of this Court, I am satisfied that the applicant has met the threshold for the exercise of this Court's discretion under Rule 4.
 14. Accordingly, the Notice of Motion dated 16th April 2025 is hereby allowed.



- 15. The applicant shall file and serve the Supplementary Record of Appeal within ten (10) days from the date hereof, failing which the orders herein shall stand vacated automatically.
- 16. Costs shall abide the outcome of the appeal.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY, 2026.

JAMILA MOHAMMED

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

