

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW APPLICATION NO. E368 OF 2025**

**UMESH BHOJWANI .....1<sup>ST</sup> APPLICANT**

**KRYPTONITE INTERNATIONAL LIMITED .....2<sup>ND</sup> APPLICANT**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTIONS .....1<sup>ST</sup>**

**RESPONDENT**

**DIRECTORATE OF CRIMINAL INVESTIGATIONS.....2<sup>ND</sup>**

**RESPONDENT**

**BELLA AKINYI .....3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before this Court for determination is the Applicants' Notice of Motion application dated 10<sup>th</sup> December 2025. The application is supported by the affidavit of Umesh Bhojwani the 1<sup>st</sup> applicant sworn on even date.
2. The Applicants seek this Court to review, vary, or set aside its directions of 25<sup>th</sup> November 2025 that struck out the substantive Notice of Motion for being filed out of time, and for its reinstatement, with leave operating as a stay.

3. The applicants seek that, in the alternative, if the Court finds that the filing of the substantive motion was out of time, that the court be pleased to enlarge time and deem the said Notice of Motion as duly filed, pursuant to Section 95 of the Civil Procedure Act and Order 50 Rule 6 of the Civil Procedure Rules.
4. The grounds upon which the above orders are sought are that following the Court's ruling of 13<sup>th</sup> November 2025 granting leave and directing filing within seven days, computation of time under Order 50 Rule 8 began on 14<sup>th</sup> November 2025, making their filing on 21<sup>st</sup> November 2025 timely.
5. They argue that the Court's subsequent striking out of the Motion arose from a computational error apparent on the record, warranting review, especially as vacating the stay exposed them to imminent criminal proceedings and prejudice.
6. They maintain that they acted consistently, diligently and in good faith, that reinstatement will cause no prejudice, and that justice and proportionality favour correction of the error.
7. In response 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed grounds of opposition dated 19<sup>th</sup> January 2026 contending that the application is incompetent, misconceived, and an abuse of process because the earlier Motion was struck out for non-compliance with the seven-day timeline and no appeal, review or setting

aside was pursued contrary to the principle of finality under Sections 1A,1B and 3A of the Civil Procedure Act.

8. They argue that this Court is *functus officio* and cannot reopen the matter, and that the attempt to reintroduce the Motion without leave of the Court or invocation of the review jurisdiction under Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules is unlawful, procedurally defective and calculated to circumvent clear statutory safeguards.
9. The respondents further contend that non-compliance with timelines is fatal and substantive and not a procedural lapse curable under Article 159 (2)(b). They rely on the case of **Raila Odinga & 5 Others v IEBC & 3 Others [2013] eKLR**, where the court is said to have observed that Article 159 is not a panacea for indolence or deliberate non-compliance with mandatory timelines.
10. It is their case that statutory timelines and court-imposed timelines are binding and enforceable, and once breached, the court is entitled to vacate interim relief, as reinforced, and failure to obey such timelines defeats the overriding objective under Sections 1A and 1B of the Civil Procedure Act.
11. They also contend that the application violates Section 7 of the Civil Procedure Act, as the issues raised were directly and substantially in issue in

the earlier struck out Motion, and as such the Applicant is barred from re-litigating the same under the guise of a fresh application.

12. According to the respondents, the Applicants' conduct would undermine judicial authority and the sanctity of court orders, contrary to Section 3A of the Civil Procedure Act and public policy. They further assert that the application is a tactic to delay lawful proceedings, defeat the overriding objective of the Civil Procedure Act, and secure through procedural maneuvering what could not be achieved through compliance with the law and should be dismissed to bring finality to the litigation.

13. The interested party who is the complainant in the criminal case relied on what the respondents had filed into court as well as the submissions by the respondents' counsel.

### **Oral Submissions**

14. The application was canvassed by way of oral submissions made by counsel for the respective parties on 11<sup>th</sup> February 2026.

15. In his submissions, Mr. Tama counsel for the Applicants reiterated that time started running on 14<sup>th</sup> November 2025 and to support this position counsel relied on the case of **Samba Colt Motors vs Registrar of Industrial Court & Others JR 132/2011**. He also relied on Order 50 Rules 6 and 8 of the Civil Procedure Rules.

16. Counsel also submitted that the delay was less than 24 hours, and that it is in the interest of justice that the application be allowed. He also relied on **Ann Atieno Adul vs Patrick Langat & Nation Media Group**. He submitted that a party shall not be punished for the mistake of counsel. Further, that there is always confusion in interpretation of the law, and that there was already a prima facie case made. Mr. Tama also submitted that the Raila case relied on by the respondents was in regard to a presidential election timeline which are cast in stone unlike these proceedings.

17. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed written submissions and also made oral highlights before the court. Their submissions reiterate their position in the grounds of opposition adding that the Applicants were aware of the timeline but ignored it. Further, that Courts do not bend rules to rescue parties from the results of their own choices, and that to invoke Article 159 in these circumstances is to misunderstand its purpose.

18. They urge that Article 159 was never meant to overthrow procedural discipline, but was meant to prevent injustice, not to reward disobedience. According to Ms. Kihara counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, equity aids the vigilant and not the indolent.

### **Analysis and Determination**

19. I have considered the application as presented and argued orally. The issue for determination is whether the application is merited and, if so, what orders to make.

20. At the centre of the Applicants' application are this Court's directions of 24<sup>th</sup> November 2025, directed as follows:

***“On 13/11/2025 this court delivered a Ruling in JR Misc E114/2025 granting the applicant leave to file Judicial Review proceedings. The court also gave a timeline for filing of the said substantive motion, which was 7 days from 13/11/2025. Seven days elapsed on 20/11/2025. The Ruling was uploaded on CTS on 13/11/2025 at 17.08.33 hours.;***

***This Judicial Review Notice of Motion was filed and paid for on 21/11/2025 which was the 8<sup>th</sup> day. No doubt, the applicant filed the substantive notice of motion outside the period given by the court. Parties must adhere to timelines given by the court.***

***I find the Notice of Motion dated 24<sup>th</sup> September 2025 to be fatally incompetent. It is hereby struck out and the stay order granted is hereby vacated and discharged. These directions to be typed and uploaded forthwith.***

21. The Civil Procedure Rules under Order 50 Rule 8 provides for computation of time as follows:

*Computation of days [Order 50, rule 8]*

*In any case in which any particular number of days not expressed to be clear days is prescribed under these Rules or by an order or direction of the court, the same shall be reckoned exclusively of the first day and inclusively of the last day.*

22. Applying this provision to the present case, the seven-day period lapsed on 20<sup>th</sup> November 2025, making the filing on 21<sup>st</sup> November 2025 outside the prescribed period, since the last day of filing did not fall on a Sunday or a public Holiday. Consequently, no error apparent on the face of the record arises to warrant review.

23. That said, this Court retains discretion under Section 95 of the Civil Procedure Act and Order 50 Rule 6 of the Civil Procedure Rules to enlarge time where justice requires. In **Multiline Services Limited v Nairobi City County Government [2025] KEHC 2484 (KLR) (12 March 2025)**, this Court observed that where a substantive notice of motion is filed late, the Court may still exercise residual jurisdiction to enlarge time, and this position was reinforced with a line of authorities from both the High Court and Court of Appeal including **Republic v Public Procurement Administrative Review Board Ex-parte Syner-Chemie Limited [2016] eKLR**, **Caltex Oil (K) Limited v Rono Limited**, **Syombua Muli Mutuva**

**v Charles A.K. Mulela [2014] eKLR, Gateway Insurance Company Ltd v Avies Auto Sprays [2011] eKLR and Wilson Osolo v John Ojiambo Ochola & the Attorney General CA No. 6 Nairobi of 1995** among others.

24. These authorities establish that the Court is not *functus officio* regarding default clauses and that it retains jurisdiction to extend time if sufficient cause is shown, even after the expiry of the original period. This guiding principle, is reinforced in **Gateway Insurance Company Ltd v Avies Auto Sprays [2011] eKLR** where the Court stated that if the order is not final and the court retains control over it and is seized of the matter as is the case before this court, it will have power to extend time. A court in deciding to extend time may consider factors such as minimal delay, plausible explanation, absence of prejudice and the importance of the matter weighed in favour of exercise of this discretion.

25. In the instant case, the filing of the substantive motion was delayed by less than 24 hours, arising from a misapprehension of the computation of time and no prejudice to the Respondents has been demonstrated. Given the nature of these Judicial Review proceedings and the potential prejudice from immediate criminal proceedings, striking out on purely technical grounds would risk disproportionate hardship to the Applicants.

26. In the circumstances, this Court finds that enlargement of time is appropriate, and the Notice of Motion should be deemed duly filed, balancing procedural compliance with the need to ensure substantive justice.

27. In the result, the prayer for review, variation, or setting aside of the Court's directions of 25<sup>th</sup> November 2025 on the basis of an error apparent on the face of the record is declined.

28. Pursuant to Section 95 of the Civil Procedure Act and Order 50 Rule 6 of the Civil Procedure Rules, time for filing the substantive Notice of Motion dated 24<sup>th</sup> September 2025 is hereby enlarged.

29. The said Notice of Motion filed on 21<sup>st</sup> November 2025 is hereby deemed as duly filed and properly on record.

30. The orders staying criminal proceedings pending against the applicants in the lower court and which orders were previously vacated are hereby reinstated pending the hearing and determination of the substantive Notice of Motion.

31. I make no orders as to costs.

32. Directions on compliance to follow.

33. It is so ordered.

**Dated, Signed & Delivered at Nairobi this 25<sup>th</sup> Day of February, 2026**

**R.E. ABURILI  
JUDGE**

ORIGINAL