



**Mogere v Telkom Kenya Limited (Civil Application E474 of 2025)
[2026] KECA 381 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KECA 381 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E474 OF 2025
J MOHAMMED, JA
FEBRUARY 27, 2026**

BETWEEN

JOSEPHINE OBAGA MOGERE APPLICANT

AND

TELKOM KENYA LIMITED RESPONDENT

RULING

Background

1. Josephine Obaga Mogere (the applicant) filed a Notice of Motion dated 1st August 2025 brought under Rules 4 and 33 of the Court of Appeal Rules, 2022 seeking extension of time to file an application for certification to appeal to the Supreme Court pursuant to Article 163(4)(b) of *the Constitution*.
Telkom Kenya Limited is the respondent herein.
2. The background is not contested. Judgment of this Court was delivered on 2nd May 2025. The applicant lodged an application for certification on 16th May 2025 within the fourteen (14) days prescribed under Rule 39 of the Supreme Court Rules, 2020.
3. It is deponed that due to a malfunction in the Court Transmission System (CTS), the application was pulled down from the e-filing portal and later marked as technically declined without notification to counsel. The anomaly was discovered on 31st July 2025, whereupon the instant motion was filed on 1st August 2025.
4. The respondent filed no response and did not demonstrate any prejudice.
5. Rule 4 of the Court of Appeal Rules grants this Court unfettered discretion to extend time limited by the Rules or by any decision of the Court. The discretion is wide but must be exercised judiciously.



6. The foundational authority remains *Leo Sila Mutiso v Hellen Wangari Mwangi* [1999] 2 EA 231, where the Court set out the now-settled factors: length of delay, reason for delay, chances of success, and prejudice.
7. In *Fakir Mohamed v Joseph Mugambi & 2 Others* [2005] eKLR, the Court emphasized that the discretion is not circumscribed and that the listed factors are not exhaustive.
8. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* [2014] eKLR articulated extension of time as an equitable remedy dependent on a satisfactory explanation and absence of undue prejudice.
9. Importantly, where extension relates to enabling a party access the Supreme Court under Article 163(4) (b), the Court must also be guided by constitutional values including access to justice under Article 48 and the command in Article 159(2)(d) to eschew undue technicality.
10. This Court has previously exercised its discretion to extend time to enable parties pursue certification to the Supreme Court where sufficient cause has been demonstrated.
11. In *Teachers Service Commission v Kenya National Union of Teachers & 3 Others* [2015] eKLR, this Court allowed extension of time to seek certification, holding that procedural lapses should not defeat a litigant's right to pursue constitutional appellate remedies where delay is explained.
12. In *County Executive of Kisumu vs. County Government of Kisumu & 8 Others* [2017] eKLR (Court of Appeal), this Court reiterated that Rule 4 discretion is designed to prevent injustice and extended time for purposes of certification.
13. Likewise, in *Judicial Service Commission vs. Speaker of the National Assembly & Another* [2013] eKLR (Court of Appeal), extension was granted to enable pursuit of certification, the Court underscoring that constitutional litigation demands a facilitative rather than restrictive procedural approach.
14. These authorities demonstrate that where the explanation for delay is credible and the issues transcend private interests, the Court leans toward sustaining the appellate chain rather than terminating it prematurely.
15. As regards length of delay, the intended certification application was initially filed within time. The operative delay arose from a system malfunction beyond the applicant's control.
16. Upon discovery of the defect, the applicant acted with promptitude. The period between discovery and filing of the instant motion was minimal.
17. The explanation is plausible, consistent, and uncontroverted.
18. On arguability, the intended appeal raises questions regarding interpretation and application of Articles 41 and 47 of *the Constitution* in the context of employment termination.
19. In *Hermanus Phillipus Steyn vs. Giovanni Gneccchi-Ruscone* [2013]eKLR, the Supreme Court defined matters of general public importance as those transcending the parties and bearing significant public interest.
20. Questions concerning constitutional standards governing termination of employment and procedural fairness in labour relations potentially affect a broad segment of employees and employers nationally.
21. While it is not for this Court at this stage to determine the certification application, the issues identified cannot be dismissed as frivolous.



22. On the degree of prejudice to the respondent, I am called upon to balance the competing interests of the parties, that is, the injustice to the applicant, in denying him an extension, against the prejudice to the respondent in granting an extension. The applicant is aggrieved by the judgment of the ELC and is desirous of appealing against the said judgment out of time. In the case of Richard Nchapi Leiyagu vs IEBC & 2 Others, Civil Appeal No. 18 of 2013, this Court expressed itself as follows:

“The right to a hearing has always been a well-protected right in our Constitution and is also the cornerstone of the rule of law. This is why even if the courts have inherent jurisdiction to dismiss suits, this should be done in circumstances that protect the integrity of the court process from abuse that would amount to injustice and at the end of the day there should be proportionality.”

23. Conversely, denial of extension would foreclose the applicant’s constitutional pathway to the apex Court.
24. Article 48 guarantees access to justice. Article 163(4)(b) provides a constitutional right of appeal upon certification. Procedural rules must therefore be interpreted in a manner that facilitates rather than obstructs constitutional rights.
25. In *Raila Odinga & 5 Others vs. IEBC & 3 Others* [2013] eKLR, the Supreme Court affirmed that rules of procedure are handmaidens of justice and not mistresses of justice.
26. The equitable discretion under Rule 4 must therefore be exercised in harmony with constitutional values.
27. Considering the length of delay, the satisfactory explanation, the absence of prejudice, and the arguable constitutional questions raised, this Court is persuaded that this is a proper case for exercise of discretion.
28. Accordingly, the Notice of Motion dated 1st August 2025 is hereby allowed.
29. Time is extended to enable the applicant file and serve the application for certification to appeal to the Supreme Court within fourteen (14) days from the date hereof.
30. There shall be no order as to costs.

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

JAMILA MOHAMMED

JUDGE OF APPEAL

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I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR.

