

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI**

(CORAM: NDERI, JA (IN CHAMBERS))

CIVIL APPEAL (APPLICATION) NO. E977 OF 2024

BETWEEN

**JULIUS OLE SUNKULI (ACTING SECRETARY
GENERAL, KANU).....APPLICANT**

AND

KENYA POWER & LIGHTING COMPANY LTD.....RESPONDENT

(Being an application for extension for serving notice of appeal and letter requesting proceedings both dated 14th December 2023 upon the respondent in Civil Appeal No. E977 of 2024)

RULING

1. Serving before me is an application dated **10th April 2025** seeking, in the main, orders for extension of time to serve the Notice of Appeal and the letter bespeaking proceedings, both dated **14th December 2023**, upon the respondent. The application is premised on the grounds set out in the Notice of Motion and buttressed in the supporting affidavits of **George Wainaina** and **Kennedy Kigen**, both sworn on

10th April 2025.

2. In his affidavit, Mr. Wainaina deposes that the Applicant was aggrieved by the ruling of **J.W.W. Mong'are, J.** delivered on **30th November 2023** in the High Court at Nairobi, and accordingly lodged a Notice of Appeal and a letter requesting proceedings on **14th December 2023**. He further avers that the applicant subsequently filed a Record of Appeal and Memorandum of Appeal dated **10th December 2024**, which were duly served upon the respondent on **15th January 2025**.
3. It is deposed that the respondent has since filed an application dated **14th February 2025** seeking to strike out the appeal on the ground that the Notice of Appeal and the letter requesting proceedings were not served within the statutory period of seven days as required under **Rule 79(1) of the Court of Appeal Rules, 2022**.
4. The applicant attributes the failure to serve the Notice of Appeal to inadvertent oversight occasioned by the relocation of their advocates' offices, misplacement of files during the transition, and closure of chambers for the December holidays. The omission was only discovered upon receipt of

the respondent's

striking-out application, by which time the statutory period had lapsed.

5. It is further deposed that the respondent was not prejudiced, as they had prior knowledge of the Notice of Appeal through **Nairobi Miscellaneous Application E494 of 2024**, filed in September 2024, in which the Notice of Appeal and the letter requesting proceedings were annexed and duly served.
6. The applicant therefore urges this Court to exercise its discretion under **Rule 4 of the Court of Appeal Rules, 2022** and **Article 159(2)(d) of the Constitution**, contending that the omission was excusable, the appeal raises arguable grounds, and justice requires that the matter be heard on its merits rather than struck out on a procedural technicality.
7. From the record, the application was not responded to nor did any party to the matter file written submissions despite notice by the registrar of this court hence the court proceeds to write a ruling based on the application before court.
8. I have considered the application before me and the

applicable law is clear that under Rule 79(1) of the Court of Appeal Rules, 2022, a Notice of Appeal must be served within seven days of

lodging, while Rule 4 of the same Rules grants this Court discretion to extend time “on such terms as may be just” whether before or after the lapse of time.

9. Further, Article 159(2)(d) of the Constitution of Kenya, 2010 enjoins courts to administer justice without undue regard to technicalities, and Section 3A of the Appellate Jurisdiction Act preserves the Court’s inherent power to make orders necessary for the ends of justice.
10. Judicial precedent has consistently guided the exercise of this discretion. In **Leo Sila Mutiso v. Rose Hellen Wangari Mwangi [1999] 2 EA 231**, the Court set out the principles for extension of time, namely: the length of delay, the reason for the delay, the chances of the appeal succeeding, and the degree of prejudice to the respondent.
11. The Supreme Court in **Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 Others [2014] eKLR** emphasized that extension of time is discretionary, exercised judiciously, and guided by equity and fairness. Similarly, in **Mwangi v. Kenya Airways Ltd [2003] eKLR**, the Court held that mistakes of counsel should not necessarily be visited upon litigants where justice

demands

otherwise, while in **Fahim Yasin Twaha v. Timamy Issa Abdalla & 2 Others [2015] eKLR**, the Supreme Court reiterated that procedural lapses should not defeat substantive justice where no prejudice is occasioned.

12. Applying these principles, the Notice of Appeal was filed on 14th December 2023 but not served, and the oversight was only discovered in April 2025. Although the delay is substantial, the applicant has explained it was occasioned by relocation of chambers, misplacement of files, and holiday closure. The affidavits of George Wainaina and Kennedy Kigen demonstrate that the omission was inadvertent and not deliberate.
13. The appeal itself challenges the ruling of 30th November 2023 in which the High Court dismissed the applicant's bid to set aside a public auction of property, specifically Nakuru Municipality Block 9/31. It raises arguable points of law and fact, including that the learned Judge erred in law and fact by failing to properly appreciate the irregularities surrounding the auction sale, and that the Judge wrongly exercised discretion in refusing to set aside the auction

despite clear evidence of prejudice to the applicant.

14. These grounds underscore that the appeal is not frivolous but raises substantive questions warranting determination on merit. The respondent has already been served with the Record of Appeal and was aware of the Notice of Appeal as early as October 2024 through Miscellaneous Application E494 of 2024, and therefore no demonstrable prejudice will be occasioned if extension is granted.
15. Striking out the appeal would deny the appellant a hearing on merit, contrary to Article 159(2)(d), which requires courts to prioritize substantive justice over technical lapses.
16. In conclusion, the applicant has satisfied the principles in **Leo Sila Mutiso** and **Nicholas Salat**, and although the delay is lengthy, it is excusable. The respondent suffers no prejudice, while the appellant risks irreparable injustice if the appeal is struck out.
17. Accordingly, the Notice of Motion dated 10th April 2025 is hereby allowed. Time for service of the Notice of Appeal and letter bespeaking proceedings dated 14th December 2023 is extended by fourteen (14) days from the date of this ruling. The appeal is deemed properly on record subject to

compliance with

this order, and costs of this application shall abide the
outcome of the appeal.

Dated and delivered at Nairobi this 13th day of March 2026.

NDUMA NDERI

.....
..... **JUDGE OF
APPEAL**

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

Signed

DEPUTY REGISTRAR.

