

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL AND TAX DIVISION**

**MISC. INCOME TAX APPEAL NO. E206 OF 2025**

**COMMISSIONER OF DOMESTIC TAXES .....**

**1ST APPLICANT**

**COMMISSIONER OF LEGAL SERVICES**

**& BOARD CO-**

**ORDINATION .....2ND APPLICANT**

**VERSUS**

**PLUM**

**LLP .....**

**RESPONDENT**

**RULING**

**Introduction**

1. Before this Court is a Notice of Motion dated 30th July 2025 brought by the Applicants seeking leave of the Court to file an appeal out of time against a decision of the Tax Appeals Tribunal.
2. The Application is supported by the affidavit sworn on the same date by Diana Amadi, Advocate.

3. The Applicants' case is that the delay in lodging the appeal was neither deliberate nor intended to obstruct the course of justice. They submit that the failure to file the appeal within the statutory timeline arose from internal administrative processes and consultations necessary before instituting appellate proceedings.
4. The Applicants argue that they have an arguable appeal with high chances of success, raising weighty issues of tax law and statutory interpretation. They further submit that the Respondent will not suffer prejudice capable of outweighing the Applicants' constitutional right of access to justice if the orders sought are granted.
5. The Respondent opposed the application through Grounds of Opposition dated December 2025.
6. The Respondent's case is that the application was filed after an inordinate and unexplained delay, and no good or sufficient cause has been shown for the failure to file the appeal within time.
7. According to the Respondent, the intended appeal is not arguable, is devoid of merit, and is an abuse of the court process.
8. The Respondent contends that litigation must come to an end and that statutory timelines, particularly in tax

matters, serve an important purpose of certainty and finality.

9. Parties did not file any submissions, despite the Court's direction in that regard. That notwithstanding, the Court shall proceed and consider the application based on the pleadings on record.

### **Analysis and Determination**

10. From the pleadings, the sole issue for determination is whether the Applicants have met the threshold for the grant of leave to file an appeal out of time.
11. Rule 3 of the **Tax Appeals Tribunal (Appeals to the High Court) Rules, 2015 ("the Rules")** provides that an appellant shall, within thirty days, after the date of service of a notice of appeal under section 32(1).
12. Rule 4 provides for the extension of time specified under Rule 3, where the Court, on application, is satisfied that "owing to absence from Kenya, sickness, or other reasonable cause, the appellant was unable to file the memorandum of appeal within that period and that there has been no unreasonable delay on the part of the appellant."

13. In Commissioner of Investigations & Enforcement v Ahmed [2021] KEHC 10 (KLR), Majanja J, while allowing the Commissioner's application for extension of time under Rule 4, stated that:

“Under Rule 4 of the Rules, the court must be satisfied that there is reasonable cause to grant the extension of time. In this case, the Commissioner filed the Notice of Appeal within time. It has explained that that reason it filed the Memorandum and Record of Appeal late was because of the illness by its counsel and that it mistook the date on the ground that date affixed on the receipt stamp was 16<sup>th</sup> June 2021. This is supported by the evidence and is a reasonable explanation for the delay of 3 days in filing the appeal. While the Commissioner did not produce evidence of its counsel's illness, I am willing to give it the benefit of doubt given that every effort was made to file the appeal and when the misstate was realised, the application for condonation was filed in short order. Lastly, I do not think that the Commissioner should be punished the mistake or inadvertence of its counsel on record.

This is case where the Commissioner should be allowed to exercise its statutory right of appeal hence any prejudice that would be occasioned on the Respondent would be assuaged by an order for costs. The Record of

Appeal which contains the Memorandum of Appeal has now been filed and served.”

14. It is well settled that the power to extend time is discretionary, though such discretion must be exercised judiciously and on sound legal principles. The Court of Appeal in ***Thuita Mwangi v Kenya Airways Ltd [2003] eKLR*** articulated the guiding factors to include: the length of delay, the reason for the delay, the arguability of the intended appeal, the degree of prejudice to the respondent, and the wider interests of justice.
15. Similarly, in ***First American Bank of Kenya Ltd v Gulab P Shah & 2 Others [2002] 1 EA 65***, the court emphasized that the discretion is intended to avoid injustice or hardship resulting from accident, inadvertence or excusable error, but not to assist a party who has deliberately sought to obstruct or delay the course of justice.
16. In the present case, there is no dispute that the appeal was not filed within the time prescribed by law. The explanation tendered by the Applicants relates to internal consultations and procedural approvals. While public institutions are expected to comply with statutory timelines, the Court takes judicial notice of the structured

decision-making processes involved in litigation by public institutions.

17. On whether the intended appeal is arguable, this Court is not required at this stage to delve into the merits of the appeal or determine its ultimate success. It suffices if the appeal raises bona fide issues deserving consideration by an appellate court. From the material placed before Court, I am satisfied that the intended appeal is not frivolous.
18. As regards prejudice, the Respondent has not demonstrated any specific prejudice that cannot be compensated by costs. On the other hand, denying the Applicants an opportunity to ventilate their grievance on appeal would permanently shut them out of the appellate process.
19. Finally, tax disputes often involve questions of public revenue, and it is in the wider public interest that such matters are determined substantively rather than defeated on procedural technicalities, provided no grave injustice is occasioned.
20. In the totality of the circumstances, and guided by the interests of justice, this Court is persuaded that the

discretion to enlarge time should be exercised in favor of the Applicants.

21. Accordingly, the Court makes the following orders:
- i. Leave is hereby granted to the Applicants to file and serve the appeal out of time.
  - ii. The intended appeal shall be filed and served **within fourteen (14) days** from the date of this ruling.
  - iii. In default of compliance with Order (2), the leave granted herein shall lapse automatically.
  - iv. Costs of the application shall abide the outcome of the appeal.
22. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAIROBI**  
**THIS 16<sup>TH</sup> DAY OF APRIL 2026**



**HON. MR. JUSTICE MOSES ADO**  
*Judge of the High Court*

**In the presence of: -**

C/A - Moses

*N/A..... for the Applicants*

*N/A..... for the Respondent*

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