



**Barclays Bank of Kenya Limited (Now ABSA Kenya PLC) v Commissioner of Domestic Taxes(Large Taxpayers Office); Kenya Bankers Association & another (Interested Parties) (Petition (Application) 12 (E014) of 2022) [2024] KESC 78 (KLR) (13 December 2024) (Ruling)**

Neutral citation: [2024] KESC 78 (KLR)

**REPUBLIC OF KENYA  
IN THE SUPREME COURT OF KENYA  
PETITION (APPLICATION) 12 (E014) OF 2022  
PM MWILU, DCJ & VP, SC WANJALA, N NDUNGU, I LENAOLA & W OUKO, SCJJ  
DECEMBER 13, 2024**

**BETWEEN**

**BARCLAYS BANK OF KENYA LIMITED (NOW ABSA KENYA PLC) ..... PETITIONER**

**AND**

**COMMISSIONER OF DOMESTIC TAXES(LARGE TAXPAYERS OFFICE) ..... RESPONDENT**

**AND**

**KENYA BANKERS ASSOCIATION ..... INTERESTED PARTY**

**MASTERCARD ASIA PACIFIC PTE LIMITED ..... INTERESTED PARTY**

*(Being an application seeking leave for extension of time to file the Respondent’s submissions out of time)*

**Principles governing Supreme Courts discretion to extend the time for filing documents**

*The application sought leave for extension time to file submissions by the applicant. The court highlighted the principles governing Supreme Courts discretion to extend the time for filing documents.*

Reported by Kakai Toili

**Civil Practice and Procedure** – *timelines for filing documents in court – extension of timelines - what were the principles that governed the exercise of discretion of the Supreme Court to extend the time for filing documents.*

**Brief facts**

The application sought leave for extension time to file submissions by the applicant. The applicant contended; that their submissions were filed on August 23, 2024 instead of the stipulated date of August 22, 2024; that the delay was occasioned by counsel’s inadvertent oversight of the prescribed timelines, compounded by a period of illness that hindered the completion of the written submissions as initially scheduled; that the delay was not



inordinate since there were valid reasons for the delay; and that no prejudice would be suffered by the other parties.

### **Issues**

What principles governed the exercise of discretion of the Supreme Court to extend the time for filing documents?

### **Held**

1. The court was clothed with unfettered discretion under rule 15(2) of the Supreme Court Rules to extend the time for filing any document. The principles that governed the exercise of such discretion were;
  1. extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;
  2. A party who sought for extension of time had the burden of laying a basis to the satisfaction of the court;
  3. whether the court should exercise the discretion to extend time, was a consideration to be made on a case-to-case basis;
  4. whether there was a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
  5. whether there would be any prejudice suffered by the respondents if the extension was granted;
  6. whether the application had been brought without undue delay; and
  7. whether in certain cases, like election petitions, public interest should be a consideration for extending time.
2. The respondent had adequately established a plausible reason for the delay. Moreover, the delay was neither unreasonable nor inordinate. The court was inclined to exercise its discretion by extending time within which the respondent was to file its submissions.

*Application allowed.*

### **Orders**

- i. *The respondent was granted seven days from the date of the ruling, within which to file and serve its submissions.*
- ii. *Both the petitioner and the 1<sup>st</sup> interested party shall have seven days from the date of service, within which to file any responses thereto.*
- iii. *Costs of the motion shall abide the outcome of the appeal.*

### **Citations**

#### **Cases**

#### **Kenya**

1. *Rai & 3 others v Rai & 4 others* (Petition 4 of 2012; [2014] KESC 31 (KLR); [2014] 2 KLR 253) — (Followed)
2. *Salat v Independent Electoral and Boundaries Commission & 7 others* (Application 16 of 2014; [2014] KESC 12 (KLR)) — (Followed)

#### **Statutes**

#### **Kenya**

1. Supreme Court Act (cap 9B) sections 21, 24 — (Interpreted)
2. Supreme Court Rules, 2020 (cap 9B Sub Leg) rules 3(2)(5); 15(1)(2); 23(3); 31; 32 —(Interpreted)

#### **Advocates**

*Mr Richard Bett* h/b for *Ms Malik* for the petitioner

*Mr Ochieng Gaya* for the respondent

*Ms Faith Macharia- Okaalo* and *Edel Ouma* for the 1st interested party



## RULING

Representation:

Mr Richard Bett h/b for Ms Malik for the Petitioner

(Kaplan and Stratton Advocates)

Mr Ochieng Gaya for the Respondent

(GO Ochieng Advocate)

Ms Faith Macharia- Okaalo and Edel Ouma for the 1st Interested Party

(Anjarwalla & Khanna LLP)

Ms Georgina Amayo and Mr Onyango Owino for the 2nd Interested Party

(Anjarwalla & Khanna LLP)

1. Upon perusing the notice of motion dated August 23, 2024 by the respondent, filed on August 26, 2024 pursuant to sections 21 and 24 of the Supreme Court Act 2011, rules 3(2), 3(5), 15(2), 15(1), 23(3), 31 and 32 of the Supreme Court Rules, 2020 seeking leave for extension time to file their submissions; and
2. Upon perusing the affidavit sworn by George Ochieng, counsel on record for the respondent, on August 23, 2024 in support of the Motion and written submissions of even date and further affidavit sworn on September 10, 2024 and further submissions of even date wherein they contend that the respondent's submissions were filed on August 23, 2024 instead of the stipulated date of August 22, 2024; that the delay was occasioned by counsel's inadvertent oversight of the prescribed timelines, compounded by a period of illness that hindered the completion of the respondent's written submissions as initially scheduled; that a genuine mistake of counsel should not be visited upon the respondent who is desirous of ventilating its case on merit; that relying on the case Salat v Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR), the delay was not inordinate since there were valid reasons for the said delay and lastly, no prejudice would be suffered by the other parties; and
3. Taking into account the replying affidavit sworn by Wilson Murage, the petitioner's Senior Legal Counsel, on September 2, 2024 and the written submissions of even date opposing the Motion wherein the petitioner contends that the respondent has failed to establish a proper basis for the delay, as no application for extension of time was made prior to the expiration of the stipulated timelines. Furthermore, that the respondent ought to have presented a doctor's report and in the absence of one, a sick sheet from a pharmacy does not suffice; and
4. Noting the replying affidavit sworn by Raimond Molenje, the Ag Chief Executive Officer of the 1<sup>st</sup> interested party, on the September 3, 2024 and the written submissions of even date opposing the motion wherein 1<sup>st</sup> interested party contends that the respondent was, in fact, required to file their submissions by August 14, 2024 as opposed to August 22, 2024 as asserted, representing an eight-day delay beyond the stipulated deadline; that this court will be sanctioning an illegality by allowing the submissions that had already been filed without leave to remain on record; and that extension of time is an equitable remedy which is only available to the deserving party; and



5. Appreciating that this court is clothed with unfettered discretion under rule 15(2) of the *Supreme Court Rules* to extend the time for filing any document; and that the principles that govern the exercise of such discretion as delineated in the *Salat Case* are as follows:

“ ...

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

6. We now opine as follows:

- i. Upon review of the record, it is undisputed that the respondent filed their submissions on August 23, 2024 following a mention of the matter before the Honourable Deputy Registrar on the same date, during which any further extension of time to file any pleading in the matter was denied. Counsel for the respondent has attributed the delay to an inadvertent oversight of the prescribed deadlines, compounded by a period of illness that hindered the timely completion of the submissions, as evidenced on the record of August 23, 2024. Counsel has urged that this oversight should not prejudice his client.
- ii. While the petitioner and the 1<sup>st</sup> interested party take a contrary stance, we give the respondent’s counsel the benefit of doubt as an officer of the court. Consequently, we find that the respondent has adequately established a plausible reason for the delay. Moreover, the delay was neither unreasonable nor inordinate.
- iii. Based on the foregoing, we are inclined to exercise our discretion by extending time within which the respondent is to file its submissions. Towards this end, the respondent is hereby granted seven days from the date of this ruling, within which to file and serve its submissions. Both the petitioner and the 1<sup>st</sup> interested party shall have seven days from the date of service, within which to file any responses thereto.
- iv. Taking into account the foregoing and this court’s decision in *Rai & 3 others v Rai & 4 others* [2014] KESC 31 (KLR), we deem it just to order that costs of the motion shall abide the outcome of the appeal.

7. Consequently, and for the reasons aforesaid, we make the following orders:

- i. The notice of motion dated August 23, 2024 and filed on August 26, 2024 is hereby allowed.



ii. Costs of the motions shall abide the outcome of the appeal.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 13<sup>TH</sup> DAY OF DECEMBER 2024.**

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**P. M. MWILU**

**DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT**

.....

**S. C. WANJALA**

**JUSTICE OF THE SUPREME COURT**

.....

**NJOKI NDUNGU**

**JUSTICE OF THE SUPREME COURT**

.....

**I. LENAOLA W. OUKO**

**JUSTICE OF THE SUPREME COURT**

I certify that this is a true copy of the original

**REGISTRAR**

**SUPREME COURT OF KENYA**

