

REPUBLIC OF KENYA
IN THE STATE CORPORATIONS APPEAL TRIBUNAL AT NAIROBI
STATE CORPORATIONS APPLICATION NO. 006 OF 2025

PETER K.

TUM.....

.....APPLICANT

VERSUS

INSPECTOR-

GENERAL (CORPORATIONS)

RESPONDENT

RULING

BACKGROUND

1. By a Chamber Summons Application dated the 18th day of September 2025, supported by the affidavit of Peter K. Turn, deponed on 18th September 2025, the Applicant sought for the following orders: -
 - i. *THAT (spent)*
 - ii. *THAT pending hearing and determination of this application, there be a stay of execution and implementation of Certificate of surcharge No. SUR/ KMTC/013/2024 and all consequential orders emanating therefrom.*
 - iii. *THAT this Tribunal be pleased to grant the Applicant leave to appeal out of time against the Certificate of Surcharge SUR/ KMTC/013/2024*
 - iv. *THAT pending hearing and determination of the intended appeal, there be a stay of execution and implementation of Certificate of Surcharge No. SUR/ KMTC/013/2024 and all consequential orders emanating therefrom.*
 - v. *THAT the costs of the Application be in the cause.*
2. The Applicant contends in summary that on 4th September 2025 while serving as Kenya's Ambassador to the Democratic Republic of Congo he received a letter from the PS Ministry of Foreign and Diaspora Affairs informing him that the Inspectorate of State Corporations had made a final determination to surcharge him Kenya Shillings One Million Eight Hundred and Thirty-Seven Thousand Three Hundred and Fifty-Five (Kshs. 1,837,355/-)
3. The letter also informed the Applicant herein that the surcharge arose from the alleged irregular appointment of one Dr. Miriam

Ndunge Muthoka between 13th November, 2025 and 11th January, 2022 to the position of Corporation Secretary of the Kenya Medical Training College where the Applicant previously served as the Chief Executive Officer.

4. The Applicant contends that the letter dated 4th September 2025 took the Applicant by surprise since all along he had been waiting for a response letter to his letter dated 29th November 2024 where the Applicant had sought for reasons for the surcharge from the Inspector General of State Corporations.
5. The Applicant contends further that having not received the reasons, he was under the mistaken believe that his right of appeal could only crystallize upon supply of the material sought in this letter 29th November 2024.
6. That upon seeking advise from his Advocates, he was informed that his right of appeal lapsed on 27th December 2024.
7. That subsequent thereto, the Applicant wrote another letter dated 16th September 2025 and requested for copies of documents relied on by the Inspector General - Corporations in rendering the decision dated 28th November 2024.
8. That since it was taking time for him time for him to receive a response from the Respondent the Applicant called the office of the Principal Secretary Ministry of Youth Affairs, Creative Economy and Sports to find out whether the Respondent had responded to his letter dated 29th November 2024.
9. The Applicant avers that indeed he was informed that the Respondent had delivered a response on 13th December 2024 at the Ministry's registry office but the same were not brought to the Applicant's attention or hand delivered to him.
10. Based on the aforesaid facts, the Applicant contends that it shall only be just to extend time and allow him exercise his right of appeal; and to be heard by presenting his case before the Tribunal.
11. The Respondent in opposing the Application, filed a Replying Affidavit dated 29th September 2025 sworn by Chrisologus Makokha who is a Deputy Inspector General- (Corporations).

12. In the affidavit the Respondent asserts that the Applicant is not deserving the equitable orders for stay and extension of time; because explanation advanced by the Applicant is not satisfactory; that the delay in itself is excessive, and premised on this, the prayer for leave to appeal out of time ought to be denied.
13. The Application and the Response were placed before the Tribunal wherein parties were directed to file written submissions.
14. The parties in their submissions relied on various cases to argue their positions with respect to the Application before this Tribunal. Indeed, the Tribunal appreciates the thoughtful insights that Counsel for both parties went through in providing case law to support their client's positions.
15. Specifically, we find solace in the decision of the Supreme Court of Kenya in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others, Supreme Court Application No. 16 of 2014[204] eKLR*, wherein the court made a finding on the principles to be relied on when a party seeks extension of time. The Supreme Court observed that the party seeking extension of has the burden to:
 - i. Lay a basis for the request to the satisfaction of the court;
 - ii. Explain the reason for the delay to the satisfaction of the court;
 - iii. To show that there will be no prejudice suffered by the Respondents if the extension is granted;

ISSUES FOR DETERMINATION

16. Whereas we understand that the decision to extend time is discretionary in nature based on the facts of each matter, we are bound by the principles set down by the Supreme Court while exercising our discretion to extend time or not.
17. We will therefore proceed to look at the facts of this matter and examine them against the principles set down by the Supreme Court in the *Nicholas Kiptoo Arap Korir Salat case(ibid)* and numerous other caselaw.

18. The tribunal has therefore narrowed down the issues raised by the parties to the following two issues for determination of this application: -

- i. *Whether the Applicant has explained the reason for delay in filing the Appeal to the satisfaction of the Tribunal;*
- ii. *Whether the Respondent will suffer prejudice if the extension of time is granted.*

ANALYSIS AND DETERMINATION

i. **Whether the Applicant has explained the reason for delay in filing the Appeal to the satisfaction of the Tribunal**

19. It is clear from numerous case law that the decision on whether or not to grant leave to appeal out of time or to admit an appeal out of time is an exercise of discretion.

20. This being an exercise of judicial discretion, like any other judicial discretion must on fixed principles and not on private opinions, sentiments, sympathy or benevolence. Additionally, the discretion must be exercised deservedly and not arbitrarily, whimsically or capriciously.

21. In determining whether the Applicant has demonstrated to merit deserving of the Tribunal's discretion to extend time to file an Appeal out of time, that places an obligation of one giving reason for delay and an explanation for the length of delay.

22. The Court's discretion being judicial must therefore be exercised on the basis of evidence and sound legal principles, with the burden of disclosing the material falling squarely on the Applicant for such orders.

23. As to the principles to be considered in exercising the discretion whether or not to enlarge time in *First American Bank of Kenya Ltd vs. Gulab P Shah & 2 Others Nairobi (Milimani) HCCC NO. 2255 of 2000 [2002] 1 EA 65* the Court set out the factors to be considered in deciding whether or not to grant such an application and these are: -

- i. the length of the delay;
- ii. the explanation if any for the delay;

- iii. the merits of the contemplated action, whether the matter is arguable one deserving a day in court or whether it is a frivolous one which would only result in the delay of the course of justice;
- iv. Whether or not the Respondent can adequately be compensated in costs for any prejudice that he may suffer as a result of a favourable exercise of discretion in favour of the applicant.

24. This was the position reiterated in *Edith Gichugu Koine vs. Stephen Njagi Thoithi [2014] eKLR*, where the Court of Appeal set out the principles undergirding an application for leave to file an appeal out of as follows:

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent if the application is granted, and whether the matter raises issues of public importance, amongst others...”

25. Having set down the legal position we now proceed to apply this to the facts of the matter. The Applicant has explained that on 4th September 2025 while serving as Kenya's Ambassador to the Democratic Republic of Congo he received a letter from the PS Ministry of Foreign and Diaspora Affairs informing him that the Inspectorate of State Corporations had made a final determination to surcharge him Kenya Shillings One Million Eight Hundred and Thirty-Seven Thousand Three Hundred and Fifty-Five (Kshs. 1,837,355/-)

26. The letter informed the Applicant herein that the surcharge arose from the alleged irregular appointment of one Dr. Miriam Ndunge Muthoka between 13th November, 2025 and 11th January, 2022 to the position of Corporation Secretary of the Kenya Medical Training College where the Applicant previously served as the Chief Executive Officer.

27. The Applicant explains further that whereas he was aware of the said surcharge he had written a letter requesting for the reasons for the surcharge on 29th November 2024 where the Applicant had sought for reasons for the surcharge from the Inspector General of State Corporations.

28. The Applicant also contends that he was of the mistaken assumption that the Appeal would only crystallize when he received a response from the Inspector General of State Corporations a position that was only clarified to him when he sought the legal services of his Advocate on record.

29. The Applicant admits that indeed after further probing on the issue, he was informed by former colleagues at the office of the Principal Secretary Ministry of Youth Affairs, Creative Economy and Sports that the Respondent had delivered a response to the Applicant's letter dated 29th November 2024 on 13th December 2024 at the Ministry's registry office but the same were not brought to the Applicant's attention or hand delivered to him.

30. From an analysis of the facts the Tribunal notes that the Applicant herein went at lengths to explain his position regarding reasons for failure to comply with the set timelines for filing the Appeal.

31. The reasons range from plausible reasons to with respect "*not so plausible reasons*". We say so because the Applicant has argued that he was under the mistaken belief that his right of appeal could only crystallize upon supply of the material sought in this letter 29th November 2024; and that he was only made aware that this position was incorrect when he consulted his Advocates.

32. On this explanation, the Tribunal takes judicial notice of the legal maxim, "*Ignorance of the law is not a defence; and it is equally not a basis to breathe life into a dead suit,*". We thus find that this reason on its own is not plausible to warrant extension of time.

33. However, in matters where an exercise of judicial discretion is called for, we must admit that where plausible reasons exist in concurrence with those that are not plausible, the court ought to consider the plausible reasons too; for purposes of advancing justice.

34. The Applicant contends that the letter dated 4th September 2025 took him by surprise since all along he had been waiting for a response letter to his letter dated 29th November 2024.

35. Whereas the Applicant has not demonstrated what other steps he took after he wrote the letter dated 29th November 2024, it is not in doubt that he took active steps to have the appeal prosecuted after he was informed of the correct legal position upon receipt of the Principal Secretary's letter dated 4th September 2025.

36. The Applicant has explained that he was not able to prosecute his appeal on time, which resulted from the failure by his previous office to bring the Respondent's documents to his attention. In our view, this is a reasonable explanation based on human error on the part of his colleagues at his former work place.

37. On the question whether the intended appeal is arguable, the Tribunal having perused the draft memorandum of appeal does not consider it patently frivolous. All that is required is a demonstration that the appeal is worthy of consideration by the Tribunal, and not necessarily that it will succeed.

38. Indeed, the Court of Appeal in *Vishva Stone Suppliers Company Limited v RSR Stone [2006] Limited [2020] eKLR* stated that:
“...an arguable appeal need not succeed...so long as it raises a bona fide issue for determination by the Court.”

39. In conclusion, we find that the Applicant has demonstrated merit deserving of the Tribunal's discretion to extend time

ii. Whether the Respondent will suffer prejudice if the extension of time is granted

40. On the issue of whether the Respondent will suffer prejudice if the extension of time is granted, the Tribunal has taken liberty to weigh the prejudice that both parties will suffer depending on its exercise of discretion.

41. As a general rule/ approach, courts in this country have now adopted the broad and less defeatist approach that there should be hesitation at terminating proceedings prior to parties being heard on the merits of their disputes.
42. Under the provisions of Article 159(2) of the Constitution of Kenya 2010, wherever the justice of the case demands, courts are directed to ignore and excuse inadvertent and excusable lapses in order to afford parties their day in court if that be seen to serve the interests of substantial justice.
43. In the context of this appeal, if time not be extended; the Applicant, will leave the Tribunal with the feeling that he has been denied access to justice so as to argue his complaint against the Respondent's decision to surcharge him.
44. Least to say that in those circumstances, the Applicant may still opt to exercise his right of Appeal to the High Court under Section 23 of the State Corporations Act Cap 446 LOK.
45. In that event, judicial time shall not have been used efficiently as that will only have the effect of lengthening the hearing and determination of the intended appeal on its merits.
46. On the flip side, to allow the appeal will not deprive or prejudice the Respondent in any way beyond the delayed realization of the sums adjudged by the trial court. That delay however cannot be equated with the difficulty and hardship to be visited upon the Applicant by terminating the Appeal before hearing.
47. Additionally, the delay will effectively be assuaged by interest if the Respondent succeeds in this appeal or at the court below after trial.
48. Nevertheless, in order to balance the prejudice that may be suffered by the Respondent in terms of being denied the fruits of his judgement, this Tribunal deems it fit that the Applicant ought to deposit a security for the decretal amount pursuant to the

provisions of Section 22(8) of the State Corporations Act Cap 446 LOK.

49. This in our view, will balance the prejudice that may be suffered by the Respondent who will have to wait for the conclusion of the Appeal to be able to realize the fruits of its judgement in case the Applicant is not successful.

50. On the other hand, if the Applicant is successful in its appeal the amount will be returned to him upon conclusion of the appeal while affording him the right to be heard.

51. Having reviewed the facts of the matter, we therefore make a finding that the balance of advantage with respect to prejudice tilts in favour of allowing the Application for extension of time.

FINAL DECISION

52. In conclusion, the Tribunal thus allows the application on the terms that the applicant is granted extension of time to file and serve a Memorandum of Appeal and any supporting documents against the Respondent's Certificate of Surcharge SUR/ KMTC/013/2024 within 30 days from the date of this ruling.

53. The Tribunal also orders pursuant to the provisions of Section 22(8) of the State Corporations Act Cap 446 LOK that the applicant shall furnish security for the surcharge amount in the form of cash deposit to the Tribunal or a bank guarantee in favour of the Kenya Medical Training College for the surcharge amount within 45 days from the date of this ruling.

54. Having granted the Applicant leave to appeal out of time the Tribunal also directs that pending hearing and determination of the intended appeal, there be a stay of execution and implementation of Certificate of Surcharge No. SUR/ KMTC/013/2024 and all consequential orders emanating therefrom.

55. For the avoidance of doubt, we must add that failure by the Applicant to comply with any of the afore said orders shall result to lapse of leave to file the appeal out of time or striking out

of the Appeal by the Tribunal (in the event that the Appeal shall have been filed).

56. The costs of the Appeal shall be in the intended appeal.

R/A 30 Days

DATED SIGNED AND DELIVERED AT NAIROBI ON THIS _____ DAY OF _____ 2025

AGGREY LUCAS KIDIAVAI

CHAIRMAN

BRUNO W. SITUMA

MEMBER

ANNE WANGECI

MEMBER