

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**[MILIMANI LAW COURTS]**  
**THE CIVIL APPELLATE DIVISION**  
**(Coram: A.C. Mrima, J.)**  
**MISC CIVIL NO. E506 OF 2025**

**-between-**

**AGOSTINO KIAMBI JASON.....1<sup>st</sup>**  
**APPLICANT**  
**JAMES ATAYA NYAMWEYA.....2<sup>nd</sup>**  
**APPLICANT**

**-versus-**

**JACOB MULEE MUSILU.....**  
**RESPONDENT**

**RULING**

1. Through an application by way of a Notice of Motion dated 9<sup>th</sup> April 2025, the Applicants sought the following orders: -
  - 1) **THAT** *the firm of Kairu & McCourt Advocates be granted leave to come on record on behalf of the Applicants/Intended Appellant in the matter.*
  - 2) *..... Spent.*
  - 3) **THAT** *this Honourable Court be pleased to grant interim stay of execution of the judgement of the Honourable Court of CMCC E9596 OF 2021 delivered on 8<sup>th</sup> December 2023, pending the hearing and determination of this Application and the Intended Appeal.*
  - 4) **THAT** *this Honourable Court be pleased to grant the Applicants/Intended Appellants leave to Appeal out of time delivered by the above said Honourable Court.*
  - 5) **THAT** *the Applicants/Intended Appellants has thoroughly perused the said judgement and are dissatisfied with the Trial Court Magistrate's decision on liability where the defendants were held 100% liable and Plaintiff awarded an inclusive sum of Kshs. 1,029,200/=.*

- 6) ***THAT*** this honourable Court allow the applicants/Intended Appellants to furnish the court with security in the form of a Bank Guarantee.
- 7) ..... Spent
- 8) ***THAT*** costs of this application abide by the outcome of the appeal.
- 9) ***THAT*** this Honourable court be pleased to issue any other order and/or direction it deems fit to grant in the circumstances.

2. The application was supported by the grounds on the face of it and the supporting Affidavit of *Jebotibin Boiwo*, Learned Counsel for the Applicants sworn on 9<sup>th</sup> April, 2025. The applicants averred that the intended appeal has a high chance of success and further that they were apprehensive that they would not be able to recover the decretal sums if the Respondent is paid. They further averred that they were dissatisfied with the judgment of the trial Court and admitted that even though the period for filing an appeal has since lapsed, they were seeking leave to prefer an appeal out of time.
3. The application was strenuously opposed by the Respondent. He filed a Replying Affidavit through his Learned Counsel *Musili Mbiti* on 14<sup>th</sup> May, 2025. He averred that the application was an abuse of the Court process as the judgment sought to be stayed/appealed against was delivered in 2023. Additionally, he averred that Applicants had not accounted for the inordinate delay in filing the instant application and the appeal. He termed the application as an afterthought and prayed that the same be dismissed with costs.
4. The application was canvassed by way of written submissions. The Respondent's submissions were dated 4<sup>th</sup> June 2025 and relied on the case of *John Muhanda & Another vs. Stanley K. Kuria & Another* to assert that inordinate delay that could only be construed as an afterthought. The Applicants did not file any written submissions.

5. From the foregoing, the only issue that stands out for this Court's determination is whether the application is merited. The guiding law and principles on extension of time were succinctly established by the Supreme Court of Kenya in ***Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 others*** [2014] eKLR.
6. From the onset, it is the position that the Applicants did not tender any explanation for the delay since 2023. The judgment in the trial Court was delivered on 8<sup>th</sup> December 2023 and the instant application was filed on 22<sup>nd</sup> April 2025. That is a period of over 2 years. Even if a party has an arguable appeal, still it is incumbent that a satisfactory explanation for the delay must, in the first instance, be rendered since equity aids the vigilant and not the indolent.
7. In this case, as the Applicants have no reasons as to why they took no action for over two years, it all ends there. The application is unmerited and is for rejection.
8. Consequently, the following final orders do hereby issue: -

**[a] The Notice of Motion dated 9<sup>th</sup> April 2025 is hereby dismissed with costs to the Respondent.**

**[b] Costs are hereby assessed at Kshs. 20,000/= [Kenya Shillings Twenty Thousand Only] payable jointly and severally by the Applicants within 30 days in default execution to issue.**

**DELIVERED, DATED and SIGNED at NAIROBI this 12<sup>th</sup> day of November 2025.**

**A.C. MRIMA  
JUDGE**

**Ruling virtually delivered in the presence of:**

**No appearance** for the Applicants.

**No appearance** for the Respondent.

**Michael/Amina** – Court Assistant.