

**IN THE COURT OF  
APPEAL AT  
NAIROBI**

**(CORAM: MUSINGA (P), (IN CHAMBERS))**

**CIVIL APPLICATION NO. NAI E338 OF 2025**

**BETWEEN**

**MOHAMED OSMAN.....APPLICANT**

**AND**

**HON. CABINET SECRETARY MINISTRY OF INTERIOR &  
CO-ORDINATION OF NATIONAL GOVERNMENT.....1<sup>ST</sup>  
RESPONDENT**

**HON. ATTORNEY GENERAL.....2<sup>ND</sup>  
RESPONDENT REGIONAL COMMISSIONER**

**NORTH EASTERN..... 3<sup>RD</sup>**

**RESPONDENT COUNTY COMMISSIONER MANDERA COUNTY  
.....4<sup>TH</sup>**

**RESPONDENT**

**DEPUTY COUNTY COMMISSIONER -**

**MANDERA EAST SUB-COUNTY.....5<sup>TH</sup> RESPONDENT**

*(Being an application for extension of time to lodge and serve the notice of appeal and record of appeal out of time from the Judgment and Order of the High Court of Kenya at Garissa (Onyiego, J.) delivered on 30<sup>th</sup> April 2025*

*in*

**High Court Judicial Review No. E006 of  
2024)**

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**\*\*\*\* RULING**

1. The applicant's notice of motion dated 29<sup>th</sup> May 2025 seeks leave to file and serve a notice of appeal and record of appeal out of time. This is in respect of a judgment delivered by **Onyiego, J.** on 30<sup>th</sup> April 2025 in **Judicial Review - HCCJR No. E006 of**

**2024.**

2. The affidavit in support of the application is sworn by **Mohammed Osman**, the applicant herein, who states, *inter alia*, that his previous

advocates failed to notify him about delivery of the judgment in time, thus causing him delay in filing a notice of appeal; that he has now instructed his current advocates, **Messrs. W. A. Merichi & Company**, who, however, cannot institute an appeal unless this Court enlarges the time for so doing; that he verily believes that his intended appeal has chances of success and has attached to his affidavit a draft memorandum of appeal; and that the respondents will not suffer any prejudice if the orders sought are granted.

3. The respondents did not file a replying affidavit but filed submissions through **Njette Adwar**, Senior State Counsel. In their brief submissions, the respondents state that the applicant's former advocate was present in court when the impugned judgment was delivered and that the alleged mistake or delay is not substantiated. The respondents also allege that the applicant was present in court during delivery of the judgment, although these are factual issues that ought to have been stated in a replying affidavit, but as earlier stated, the respondents did not file any.
4. The respondents further state that there has been no due diligence on the part of the applicant in pursuing the intended appeal, which they contend has no chances of success.
5. I have considered this application as well as the submissions filed by both parties. In an application for extension of time under

**rule 4** of this **Court's Rules**, the Court exercises unfettered discretion, but the discretion has to be exercised judiciously. In **Nicholas Kiptoo**

**Arap Salat v Independent Electoral and Boundaries**

**Commission & 7 others [2014] KESC 12 (KLR)**, the

Supreme Court set out the principles that a court should consider in exercise of its discretion in an application for extension of time. The Court stated that the underlying principles that should be considered in exercise of such discretion are:

- “(i) 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;***
- (ii) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;***
- (iii) Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;***
- (iv) Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;***
- (v) Whether there will be any prejudice suffered by the respondents if the extension is granted;***
- (vi) Whether the application has been brought without undue delay; and,***
- (vii) Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”***

6. It is not in dispute that the impugned judgment was delivered on 30<sup>th</sup> April 2025. There is no evidence that the applicant or his advocate was in court when the impugned judgment was

delivered as alleged by the respondents in their submissions.  
Therefore, I have no reason to doubt the applicant's contention  
that his previous

advocates failed in notifying him in good time about the delivery of the judgment.

7. On 29<sup>th</sup> May 2025, about one month after delivery of the impugned judgment, the applicant's current advocates applied for certified copies of the proceedings with a view to filing an appeal. The delay is not inordinate and has been well explained.
8. As regards the chances of success of the intended appeal, the draft memorandum of appeal that has been annexed to the applicant's affidavit contains 12 proposed grounds of appeal. Having perused the impugned judgment as well as the draft memorandum of appeal, I do not think that the intended appeal is frivolous. It is arguable.
9. The respondents will not suffer any prejudice if the orders sought are granted. Consequently, I hereby exercise my discretion in favour of the applicant and grant leave to file and serve the notice of appeal as well as the record of appeal out of time. The same should be filed and served within **sixty (60)** days from the date of the ruling. The costs of the application shall abide the outcome of the appeal.

**Dated and delivered at Nairobi this 21<sup>st</sup> day of November 2025.**

**D. K. MUSINGA, (PRESIDENT)**

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

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

**Signed**  
**DEPUTY**  
**REGISTRAR.**