



4. The limited grant was finally taken on 19<sup>th</sup> August, 2025. It is on this basis that the Applicants are seeking for extension of time to file the appeal out of time.
5. The Applicants' application was opposed by the Respondent based on a replying affidavit sworn on 23<sup>rd</sup> September, 2025. The Respondent contends that the application is an abuse of the process of court in that the Applicants have no capacity to bring this application as they have neither been substituted before the lower court nor before the appeal.
6. The Respondent further contends that there was no appeal to withdraw as the appeal had been filed after the deceased had died. The Respondent states that the application has been brought after inordinate delay which has not been explained. The Respondent further state that he will stand prejudice and that the application is meant to delay the finalization of the matter.
7. The application was argued orally. I have considered the Applicants' application, the opposition thereto by the Respondent as well as the oral submissions during the hearing. The only issue for determination is whether the Applicants have met the threshold for grant of extension of time to file an appeal out of time.
8. There are numerous decisions from the superior courts which have set out the parameters for exercise of the court's discretion when it comes to applications for extension of time. The Supreme Court of Kenya in the case of **Nicholas Kiptoo Arap Korir Salat –vs- Independent Electoral and Boundaries Commission & 7 others (2014) eKLR** stated 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 reasonable reason for the delay, the delay should be explained to the satisfaction of the court.**

9. In the instant case, there were three Appellants who instructed their lawyer to file an appeal against the judgment of 29<sup>th</sup> August, 2024. The lawyer proceeded to file the appeal on 25<sup>th</sup> September, 2024 within the stipulated 30 days from the date of judgment. Unknown to the lawyer, the deceased had died 3 days before the appeal was filed. When the lawyer learned about the demise of the deceased, the appeal by the deceased had to be withdrawn.

10. It took time for the polygamous family of the deceased to agree on who was to take out limited grant for purposes of pursuing the appeal on behalf of the estate of the deceased. It took the intervention of the Deputy County Commissioner for the family to agree. This was the cause of the delay.

11. The limited grant was obtained on 19<sup>th</sup> August, 2025. The application for extension was made on 15<sup>th</sup> September 2025. The reason for the delay in filing the appeal has been explained to the satisfaction of the court. In fact the Applicants' lawyer had received instructions to file the appeal before the death of the deceased. The appeal was filed on behalf of the three Appellants but the appeal by the deceased had to be withdrawn when it became apparent that the deceased had died 3 days before the filing of the appeal.

12. The Applicants filed the application after obtaining the limited grant. They did not have to be substituted before the lower court. What is important is substitution before filing the appeal. There will be no prejudice suffered by the Respondent. I therefore find that the Applicants' application is well merited. I allow the same and direct that the appeal shall be filed within 14 days of today's date. The costs of this application shall abide the outcome of the appeal.

It is so ordered.

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**HON. E. O. OBAGA**  
**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT  
TEAMS THIS 11<sup>TH</sup> DAY OF DECEMBER, 2025.**

**IN THE PRESENCE OF:**

Ms. Kenyatta for Applicant.

Mr. Njuguna for Respondent.

Court assistant – Steve Musyoki

ORIGINAL