



REPUBLIC OF KENYA



**Ngaruthi v Bonasa (Civil Application E170 of 2025)  
[2025] KECA 2245 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2245 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E170 OF 2025  
A ALI-ARONI, JA  
DECEMBER 19, 2025**

**BETWEEN**

**PATRICK MUNGANIA NGARUTHI ..... APPLICANT**

**AND**

**ADAN HOQA BONASA ..... RESPONDENT**

*(Being an application for extension of time to file and serve record of appeal from the Judgment of the Environment and Land Court at Isiolo (Mboya, J.) delivered on 5th June 2025 in ELCA NO. E012 OF 2024)*

**RULING**

1. Before the Court is an application by way of a notice of motion dated 17<sup>th</sup> November 2025, brought under rule 4 of the Court of Appeal Rules (the Rules), seeking an extension of time to file and serve the record of appeal within 30 days.
2. The application is predicated on the grounds on the face of the application which were rehashed in the supporting affidavit sworn on 17<sup>th</sup> November 2025, by the applicant stating judgement was delivered on 5<sup>th</sup> June 2025; the applicant was aggrieved by the judgment and intends to appeal ; a notice of appeal was lodged ; a request for the typed proceedings was filed on 17<sup>th</sup> June 2025; it took cumulatively four (4) months and 7 days to have the proceedings typed, proof-read and signed for collection; the Deputy Registrar of Isiolo Environment and Land Court issued a certificate of delay on 10<sup>th</sup> October 2025; the appeal has a high chance of success as demonstrated in the annexed copy of the draft memorandum of appeal; and it is in the best interest of justice that the prayers sought be granted as the delay was not on the part of the applicant.
3. The respondent has not filed a response, neither has he filed submissions.



4. Learned counsel for the applicant filed submissions and a list of authorities both dated 4<sup>th</sup> December 2025. Counsel submitted that the application is premised on rule 4 of the Rules, which grants the Court discretionary power to extend time. Counsel rehashed the grounds in support of the application and the averments in the affidavit of the applicant. He contended further that the appeal has a high chance of success, referencing the grounds in the annexed draft memorandum of appeal. In support of his submissions counsel relied on *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR, where the Court held that a plausible and satisfactory explanation for delay is key to unlocking the Court’s discretion. He also cited *Fakir Mohammed vs. Joseph Mugambi & 2 Others* [2005] eKLR and *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi Civil Appeal No. Nai 255 of 1977*, where the court held that the factors the court may consider include: the length of the delay, the reason for the delay (which must be plausible and satisfactory), the chances of the appeal succeeding (arguable appeal) and the degree of prejudice to the respondent if the application is granted. He contended that the delay was satisfactorily explained, the appeal is arguable and the respondent will not be prejudiced if the application is granted.
5. I have considered the application, the affidavit in support and the submissions. The issue for determination is whether to grant leave to appeal out of time. Rule 4 of the Rules governs the extension of time. The Rule allows this Court to exercise discretion to extend the time limited by the Rules for doing any act authorized or required by the Rules. In *Salat vs. Independent Electoral and Boundaries Commission & 7 Others (Application 16 of 2014)* [2014] KESC 12 (KLR) (Civ) (4 July 2014) (Ruling), the Supreme Court had this to say on the issue of extension of time:

“... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for the delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.

... we derive the following as the underlying principles that a Court should consider in exercising such discretion:

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 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. where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;
5. whether there will be any prejudice suffered by the respondents, if 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.”



This Court on the same subject stated in *Towett vs. Kibaru & Another* (Civil Application E191 of 2025) [2025] KECA 1650 (KLR) (9 October 2025):

“Rule 4 of the Court of Appeal Rules, 2022 empowers this Court to extend time for the doing of any act authorized or required by the Rules. The power is discretionary and should be exercised judicially upon good cause being shown. Some of the factors to bear in mind include the period of delay; the reason for the delay; the degree of prejudice the respondent stands to suffer; justice should be administered without undue regard to procedural technicalities and that justice should not be delayed. (see *Njeri Njoroge v Joseph Maina Gichuhi & another* [2018] eKLR)”.

6. In the instant matter judgement was delivered on 5<sup>th</sup> June 2025 and the applicant lodged his notice of appeal on 10<sup>th</sup> of June 2025; on time. He applied for proceedings on the 7<sup>th</sup> of June 2025, and received by court on 10<sup>th</sup> June 2025; the certificate of delay was issued on 15<sup>th</sup> October 2025, and within a month this application was filed.
7. The explanation made is satisfactory though the application ought to have been filed much earlier. I grant the application. The appeal be filed and served within the next 21 days of this ruling.
8. Costs of the application will abide by the outcome of the appeal.

**DATED AND DELIVERED AT NYERI THIS 19<sup>TH</sup> DAY OF DECEMBER, 2025.**

**ALI-ARONI**

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**JUDGE OF APPEAL**

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

**Signed**

**DEPUTY REGISTRAR**

