



REPUBLIC OF KENYA



**Nkonge & 3 others v Mugambi (Civil Application E185 of 2025)
[2026] KECA 29 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KECA 29 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E185 OF 2025
A ALI-ARONI, JA
JANUARY 23, 2026**

BETWEEN

**TIMOTHY NKONGE 1ST APPLICANT
MOSES KAIMENYI 2ND APPLICANT
LAWRENCE KOOME 3RD APPLICANT
ROSE NGUGUNE 4TH APPLICANT**

AND

JOHN MUGAMBI RESPONDENT

*(Being an application for an extension of time to file an appeal out of time
from the Judgment of the Environment and Land Court at Nanyuki (L.
Mbugua, J.) delivered on 24th September 2025 in ELCA No. 13 of 2023)*

RULING

1. Before the Court is an application by way of a notice of motion dated 15th December 2025, brought under rule 4 of the *Court of Appeal Rules* ('the Rules'), seeking leave to file an appeal out of time.
2. The application is predicated on the grounds on the face of the application rehashed in the supporting affidavit sworn by the 1st applicant on 15th December 2025, wherein he states that he is one of the beneficial owners of property known as Laikipia/Kalalu/1801; on 12th November 2019, the applicants filed an appeal to the Environment and Land Court (ELC) from the decision of trial court and the ELC delivered its judgment on 24th November 2025, dismissing the appeal; on 9th October 2025, the applicants filed a notice of appeal and a request of proceedings vide the Case Tracking System (CTS) portal and filed a physical copy with the registry of ELC at Nanyuki.



3. On 17th November 2025, the applicants received a certified copy of typed proceedings after a lapse of 30 days; their intended appeal is arguable and has overwhelming chances of success; the respondent will not be prejudiced, and the delay in filing was occasioned by not receiving a certified copy of typed proceedings on time.
4. The respondent has filed a replying affidavit sworn on 14th January 2026, and states that the applicants did not file a statement of defence in the subordinate court. Further, the ELC judgment was delivered on 24th September 2025, making the deadline for lodging a notice of appeal the 8th October 2025, but the applicants lodged the same on 16th October 2025, without seeking leave from the court.
5. The respondent further avers that the draft memorandum of appeal is frivolous, containing no triable issues and focusing only on facts rather than the law. It is further contended that there is no plausible explanation for the 29-day delay between the applicants' receipt of the typed proceedings (17th November and the filing of the current application (15th December 2025). Further, the respondent did not serve the current application, the notice of appeal, or the letter bespeaking proceedings, as required by the *Court Rules*. The respondent's counsel learnt of the application through a court registry email on 8th January 2026. The Court lacks jurisdiction because the notice of appeal was not filed within the time allowed. The case has been ongoing since 2012, and the application is a tactic by indolent litigants to delay execution and deny the respondent the fruits of the judgment.
6. Learned counsel for the applicants has filed submissions dated 16th January 2026 and argues that due diligence has been demonstrated since their notice of appeal was lodged on 9th October 2025 and a request for typed proceedings sought on the same day via the Case Tracking System (CTS).
7. Further, counsel asserts that these documents were served on the respondent's counsel via email on 14th October 2025. The primary reason for the delay in filing the appeal was that the typed proceedings, required for the record of appeal under rule 82(1), were received after the statutory period had expired.
8. Counsel contends that the court has the discretionary power to extend time limits if sufficient reason is provided. To support this, he relied on *Abdul Aziz Ngoma v Mungai Mathayo* [1976] eKLR:

“...this Court's discretion to extend time under Rule 4 only comes into existence after 'sufficient reason' for extending time has been established.”
9. Counsel also cites *Fakir Mohamed v Joseph Mugambi & 2 Others* [2005] KECA 340 (KLR) and *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* (Civil Application No. 91 of 2017) [2018] KECA 701 (KLR), where this Court held that the period of delay, the reason for the delay, diligence of the applicant, and prejudice to the respondent are all relevant factors to be considered and once sufficient explanation is given the Court may allow extension of time.

Counsel further dismisses the respondent's objection that typed proceedings were unnecessary for preparing the record of appeal - as "baseless" under rule 82(1).
10. In opposition learned counsel for the respondent has filed submissions and a list of authorities, both dated 14th January 2026. Counsel cites the Supreme Court decision of *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* (Application 16 of 2014) [2014] KESC 12 (KLR), and contends that filing an appeal out of time before obtaining an extension of time is an illegality that renders the document a nullity. The respondent claims the application is self-defeating because it asks the Court to extend time for an action (filing the appeal) that the applicants have already performed irregularly.



11. Counsel submits that the ELC judgment was delivered on 24th September 2025, setting a deadline of 8th October 202, for the notice of appeal. The applicants failed to file the notice of appeal by more than a week without explanation.
12. Counsel further argues that lack of typed proceedings is not a valid excuse for failing to file a notice of appeal on time. Even after receiving the proceedings on 17th November 2025, the applicants waited 29 days (until 15th December 2025) to file the instant application, a delay for which no reason was provided.
13. Counsel asserts that the applicants failed to serve the notice of appeal, the letter bespeaking proceedings, or the instant application itself upon the respondent or their advocate. Counsel characterises the intended appeal as frivolous, claiming the memorandum of appeal focuses on facts rather than law and discloses no triable issues.
14. Counsel maintains that because the applicants have not satisfied the criteria for the Court to exercise its discretion— specifically regarding the length of delay, the reasons for it, and the arguability of the appeal—the application should be dismissed with costs.
15. I have considered the application, the supporting affidavit, the replying affidavit and the submissions. The issue for determination is whether to grant the applicant an extension of time to file and serve the record of appeal.
16. The respondent has complained that the notice of appeal was served late. This may be so, but the matter is not in issue before this Court. Rule 86 of the [Rules](#) provides the steps to be taken when the notice of appeal has an issue.
17. Rule 4 of the [Court of Appeal Rules](#) states that; -

“The Court may, on such terms as may be just, by order, extend the time limited by these [Rules](#), or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these [Rules](#), whether before or after the doing of the act, and a reference in these [Rules](#) to any such time shall be construed as a reference to that time as extended.”
18. In [Egerton University v Thiongo](#) (Civil Application E141 of 2025) [2025] KECA 1983 (KLR), this Court held:

“The principles governing applications for extension of time are well settled. As stated in [Abdul Aziz Ngoma v Mungai Mathayo](#) [1976] eKLR, this Court’s discretion to extend time under Rule 4 only comes into existence after ‘sufficient reason’ for extending time has been established. As further elaborated in [Fakir Mohamed v Joseph Mugambi & two others](#), Civil Application No. Nai. 332/04, the exercise of this Court’s discretion is unfettered, and relevant factors include the period of delay, the reason for the delay, the chances of the appeal succeeding, the degree of prejudice to the respondent, and the importance of compliance with time limits.”
19. Judgment was delivered on 24th September 2025. Notice of appeal was lodged on 15th October 2025, the same day the letter bespeaking the proceedings was filed. Notable is that counsel for the appellant did not copy the same upon counsel for the respondent as required by rule 84 which states as follows:
 1. Subject to rule 118, an appeal shall be instituted By lodging in the appropriate registry, within sixty days after the date when the notice of appeal was lodged—Institution of appeals.



- a. a memorandum of appeal, in four copies;
- b. the record of appeal, in four copies;
- c. the prescribed fee; and
- d. security for the costs of the appeal:

Provided that where an application for a copy of the Proceedings in the superior court has been made in accordance with sub-rule (2) within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.

2. An appellant shall not be entitled to rely on the proviso to sub-rule (1) unless the appellant's application for such copy was in writing and a copy of the application was served upon the respondent.
 3. The period specified in sub-rule (1) for the institution of appeals shall apply to appeals from superior courts in the exercise of their bankruptcy jurisdiction.
20. Since the applicant cannot enjoy the proviso to rule 84, this Court has to consider, alongside other factors, whether sufficient explanation has been made in support of the delay. The Supreme Court in Salat v Independent Electoral and Boundaries Commission & 7 Others (*supra*) set the parameters to be considered in an application for extension of time as follows; -

“ 16. Discretion to extend time was indeed unfettered.

It was incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there were any extenuating circumstances that could enable the court to exercise its discretion in favour of the applicant.

17. The court ought to consider the following principles in exercising the discretion to extend time for filing an appeal:
 - a. Extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;
 - b. A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;
 - c. Whether the court ought to exercise the discretion to extend time, was a consideration to be made on a case-by- case basis;
 - d. Whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;
 - e. Whether there would be any prejudice suffered by the respondents if the extension was granted;
 - f. Whether the application had been brought without undue delay; and



- g. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time”. (Emphasis added).

21. In *Abdul Azizi Ngoma v Mungai Mathayo* [1976] KLR 61, 62, this Court stated:

“We would like to state once again that this court’s discretion to extend time under rule 4 only comes into existence after ‘sufficient reason’ for extending time has been established and it is only then that other considerations such as the absence of any prejudice and the prospects or otherwise of success in the appeal can be considered.”

22. The only reason for the delay advanced is the delay in receiving the proceedings, which were received on the 17th of November 2025. Under rule 84, the time for filing the record of appeal lapsed on 13th December 2025. Counsel’s ignorance that he had 60 days as opposed to 30 days caused a premature application to be filed unnecessarily, as the applicant still had a month to go before the lapse of time.

23. The above notwithstanding, I do not think it is right to punish a litigant who is desirous of following up on an appeal due to a mistake of counsel. I have also considered the draft memorandum of appeal and do not find it idle. I therefore allow the extension of time to file the record of appeal, which has since lapsed. The record is to be filed and served within thirty (30) days of today’s date.

24. Costs to abide by the outcome of the appeal.

DATED AND DELIVERED AT NYERI THIS 23RD DAY OF JANUARY, 2026.

ALI-ARONI

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR

