



REPUBLIC OF KENYA



**Lwangu v Ndoté & 23 others (Civil Application E090 of 2025)  
[2026] KECA 397 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KECA 397 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT ELDORET  
CIVIL APPLICATION E090 OF 2025**

**JM MATIVO, JA**

**MARCH 5, 2026**

**BETWEEN**

**SOPHIE FEIS CAROLINE LWANGU ..... APPLICANT**

**AND**

**BENSON WAFULA NDOTÉ & 23 OTHERS & 23 OTHERS ..... RESPONDENT**

*(Being an application for leave to file and serve a notice of appeal and record of appeal out of time against the judgment of the Environment and Land Court of Kenya at Kitale (F. Nyagaka, J.) dated 24th March, 2025 in ELC No. 79 of 2010)*

**RULING**

1. Vide an application dated 23<sup>rd</sup> December 2025, the applicant prays for leave to file and serve a notice of appeal and record of appeal out of time against the judgment delivered on 24<sup>th</sup> March 2025 in Kitale ELC No. 79 of 2010. The applicant also prays for an order that the costs of this application be in the intended appeal. The application is brought under Order 51 Rule 1 of the Civil Procedure Rules, 2010, and all enabling provisions of law. I must respectively point out that the said provisions do not apply to proceedings before this Court which are governed by the Court of Appeal Rules, 2022.
2. The grounds in support of the application are that the impugned judgment was delivered on 24<sup>th</sup> March 2025 ordering the cancellation of the applicant's title for L.R. No. Trans- Nzoia/Sinyerere/715. That the court ordered that the title reverts to the Estate of Jeridah Kilisa Ndoté. The applicant states that at all material times, she was represented by counsel who failed to advise her on the statutory timelines for filing an appeal and instead filed a stay of execution application, which was heard and dismissed, thereby contributing substantially to the delay.
3. In addition, the applicant states that immediately after delivery of judgment, she travelled out of the country for medical treatment, remained unwell and was unable to follow up the matter personally or even communicate effectively or issue instructions regarding the filing of an appeal. That she only



learnt that the timelines for filing an appeal had lapsed after returning to Kenya and upon engaging new counsel. Therefore, the delay in filing the notice of appeal and record of appeal is neither deliberate nor inordinate but entirely attributable to: (a) ill-health, (b) absence from the country, and (c) misdirection by previous counsel including pursuing an ultimately unsuccessful stay application.

4. The applicant maintains that the respondents will suffer no prejudice if the orders sought are granted, however, she stands to lose her entire property and suffer irreversible loss if she is denied the right to appeal. Lastly, it is in the interests of justice, fairness and the right to access justice under Article 50 and 159 of *the Constitution*, that this Court exercises its discretion to extend time.
5. In opposition to the application, the respondents filed a replying affidavit sworn by the 1<sup>st</sup> respondent dated 3<sup>rd</sup> March 2026. The salient averment is that the application is fatally defective, that it has been brought under the wrong provisions of the law. In their submissions the respondents maintain that the delay is inordinate.
6. I have considered the application, the affidavit in support thereto and its annexures, the replying affidavit and submissions in opposition to the application. The application is brought under Rules 4 and 41 of the Court of Appeal Rules, 2022. Rule 4 provides that:

“The Court may, on such terms as it thinks 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.”
7. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR summed up the applicable considerations as follows:
  - i. Extension of time is not 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.
8. As decided cases suggest, a plausible, reasonable and comprehensive explanation for the delay is a crucial, though not sole factor that triggers the Court’s discretion to grant extension of time to file an appeal. Courts operate on the principle that if there is no reasonable explanation, the indulgence will generally not be granted even if there are prospects of success.
9. An applicant must provide a "good cause" or "sufficient cause," which means a full and reasonable explanation that covers the entire period of the delay. A vague or incomplete explanation will not



trigger the discretion to condone. (See Silber vs. Ozen Wholesalers (Pty) Ltd 1954 (2) SA 345 (A)). I must emphasize that condonation is not a right, and that "hard-earned judgments" should not be lightly disturbed. A party must show a valid reason for the laxity.

10. The investigation into the reasonableness of the delay is a factual enquiry. However, once a "plausible explanation", is found to exist, it enables the Court to look at other factors like prospects of success so as to exercise its discretion.
11. To be deemed "plausible" and trigger the Court's discretion, the applicant generally must show: (a) that the delay was not due to negligent inaction. The delay must be accounted for by factors beyond the applicant's control (e.g., waiting for transcripts, severe illness or genuine attorney negligence, though the latter is viewed critically). (b) It must cover the entire period. Explaining only part of the period of delay is "far from satisfactory" and most likely, it will not justify the extension. (c) the reason must not be "fictitious" or "calculated" delay the case. The Court requires honesty in the explanation.
12. The guiding threshold is clearly set out in rule for which is "on such terms as may be just" which means the standard is the "interests of justice," which requires balancing the explanation for the delay, the prospects of success, the importance of the case and prejudice to the parties. A plausible explanation, however, is the "key that unlocks the door" to this balancing exercise. If the explanation for the delay is not plausible (i.e., it is weak, contradictory, or non-existent), the Court usually will not exercise its discretion to extend time even if the appeal has merit. A good explanation for a long delay is often needed to satisfy the "good cause" requirement.
13. I have looked at the reasons provided the applicant highlighted earlier. I am persuaded that the reasons are plausible. Accordingly, I am inclined to exercise my discretion in the applicant's favour. In conclusion, I allow the applicant's application dated 23<sup>rd</sup> December 2025. The applicant is hereby granted leave to file and serve the record of appeal within 45 days from today. No order as to costs.

**DATED AND DELIVERED AT ELDORET THIS 5<sup>TH</sup> DAY OF MARCH, 2026.**

**J. MATIVO**

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**JUDGE OF APPEAL**

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

Signed.

**DEPUTY REGISTRAR.**

