

**IN THE COURT OF APPEAL
AT ELDORET**

(CORAM: MATIVO, JA (IN CHAMBERS))

CIVIL APPLICATION NO. ELD E002 OF

2026 BETWEEN

**EVANS WAWERU.....1ST
APPLICANT**

**SILA YEGO.....2ND
APPLICANT**

**DORINE MBATHI.....3RD
APPLICANT**

AND

JOHN MAINA.....RESPONDENT

(Being an application for stay of execution from the judgment of the Environment and Land Court of Kenya at Kitale (C. K. Nzili, J.) dated 19th February 2025

in

ELC Appeal No. E010 of 2023).

RULING

1. In this omnibus application dated 9th January 2026, the applicant prays for: (a) stay of execution of the Judgment delivered by *Nzili*,

J. on 19th February 2025 in Kitale ELC Appeal No. E010 of 2023; and, (b) leave to file and serve a notice of appeal and/or record of appeal out of time against the said Judgment. Prayer (a) is a three- judge bench matter while prayer (b) is a single judge matter.

2. Courts worldwide abhor "*omnibus applications*", (pleadings that seek multiple, often contradictory or vague reliefs, or implead

numerous parties without specific allegations against each. "*Omnibus applications*" often referred to as shotgun approaches, fishing expeditions, or overly broad, vague and sweeping motions are in many cases categorized as an abuse of court process. These applications, which bundle numerous, often unrelated requests or broad complaints without specific, substantiated facts are criticized for causing unnecessary delays and creating confusion. Courts require that applications be precise.

3. The application is supported by the annexed affidavit annexed thereto sworn by the 1st applicant on behalf of himself and the 2nd and 3rd applicants. He averred that they never instructed their former advocate to file or prosecute an appeal at the High Court nor did they pay any monies to him for purposes of lodging, processing or conducting such appeal on their behalf. They claim that they only became aware of the judgment after they were served with a notice of taxation, which was the first formal indication that the matter had been concluded. Further, the delay in filing the notice of appeal and record of appeal was not deliberate but was occasioned by circumstances beyond their control including: (a) change in legal representation; (b) a breakdown in communication with their former advocate; (c)

failure by the former advocate to inform them of the delivery of the judgment or subsequent appellate steps.

4. The applicants maintain that upon learning of the judgment and the taxation proceedings, they acted promptly and diligently by instructing the firm of Ondicho Osindi & Company Advocates to take immediate steps to safeguard their right of appeal and that, their intended appeal is arguable, raises serious issues of law and fact, and deserves consideration by this Court. Further, if the extension sought is not granted, they will suffer irreparable prejudice and will be unjustly shut out from exercising their constitutional right of appeal. On the other hand, it is their case that no prejudice will be suffered by the respondent if the orders sought are granted. Lastly, the delay involved is not inordinate is fully explained, and that they have demonstrated good faith and a genuine desire to pursue the appeal.
5. The respondent opposed the application through the replying affidavit of Peter Kiarie Maina dated 27th February 2027. The salient ground is that the application is bad in law and that a stay application under Rule 5 (2) (b) can only be granted where a notice of appeal has been filed.

6. I will only address the prayer for extension of time which falls within the jurisdiction of a single judge. As has been pointed out by the respondent, there is no notice of appeal in the documents filed. It appears it was not filed. In the circumstances, this application is unsustainable. It is a competent notice of appeal which triggers this Court's jurisdiction in an application of this nature. On this ground alone, this application collapses.
7. The above notwithstanding, I have considered the application, the affidavit in support thereto and the law. Rule 4 of the Court of Appeal Rules, 2022 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.”

8. 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.**

9. 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. 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 the delay. (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 of the appeal 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 applicants' 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 or shifting the burden to the lawyer on record without cogent proof of his laxity or inaction is "*far from satisfactory*" and most likely, it will not justify the extension. (c) the reason must not be "*fictitious*" or "*calculated*" to delay the case or evade the wrath of a validly obtained judgment. 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, 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. The applicants' key reason is that they did not instruct their advocate to appeal against the decision of the Magistrates' court. It is their case that they only learnt about the existence of the decision rendered by the ELC after they were served with a taxation notice. They insist that they did not pay the advocate to mount the appeal. In other words, they totally dissociate themselves with the appeal. This is a very serious allegation accusing an advocate of acting without instructions and without being paid legal fees. They suggest that the advocate on his own motion instituted an appeal without consulting his clients and without being paid fees and pursued the appeal up to conclusion. These are highly incredible averments. A court of law must always warn itself against accepting stereotyped, vague or concocted explanations. If the allegations were true, one would have expected a protest letter to the advocate questioning their misconduct and a complaint to the advocates' disciplinary committee and even an

application to the lower court impeaching the proceedings.

Perhaps, in this list we can add a copy of a letter from the advocate shedding light on the allegations against him. The bottom line is that "*sufficient reason*" for delay must be supported by credible evidence and that courts should not be led by sympathy when there is no valid excuse according to principles in **Murray**

Alexander Carson [1963] EA 546.

14. I can usefully profit from the Supreme Court decision of India in **M/s Sciemed Overseas Inc vs. BOC India Limited, AIR 2016** which reaffirmed that filing a false affidavit is an "*evil*" that must be curbed. When an affidavit in support of a delay application is found to be based on falsehoods to manipulate the limitation period, the Court may not only reject the application but also initiate proceedings for perjury.
15. Condoning a delay in filing an appeal is a discretionary power exercised by courts based on the principle of "*sufficient cause*," and "*on terms that are just*" primarily governed by Rule 4 of the Court of Appeal Rules. The core requirement is that the delay must be explained with reasonable, honest and *bona fide* justifications rather than being a result of negligence, inaction or lack of diligence, dishonesty or falsehoods.

16. In conclusion, I am not persuaded that the reasons offered by the respondent are plausible. Accordingly, I am not inclined to exercise my discretion in the applicant's favour. Consequently, I decline the prayer for extension of time. I make no orders as to costs.

Dated and delivered at Eldoret this 5th day of March, 2026.

J. MATIVO

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

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

Signed.

DEPUTY REGISTRAR.