

IN THE COURT OF
APPEAL AT
NAIROBI

CORAM: JAMILA MOHAMMED, J.A. (IN
CHAMBERS)) CIVIL APPLICATION NO. E355 OF
2025

BETWEEN

**PRINCIPAL SECRETARY FOR INTERNAL SECURITY
& NATIONAL ADMINISTRATION1ST**
**APPLICANT REGIONAL COMMISSIONER,
NORTH EASTERN REGION2ND**
**APPLICANT COUNTY COMMISSIONER, GARISSA
COUNTY.....3RD APPLICANT DEPUTY COUNTY
COMMISSIONER,
LAGDERA SUB-COUNTY.....4TH**
**APPLICANT MINISTRY OF INTERIOR AND
NATIONAL ADMINISTRATION.....5TH**
**APPLICANT
ATTORNEY GENERAL.....6TH**
APPLICANT

AND

DUBEN HUSSEIN GUREY.....1ST
RESPONDENT
ANWAR YUSSUF AHMED 2ND
RESPONDENT
MASLAH HUSSEIN GURE 3RD
RESPONDENT

(Application for extension of time to file Notice of Appeal and Record
of Appeal out of time from the judgment and decree of the High
Court of Kenya at Garissa (Byron Ongaya, J.) dated 19th December
2024

in

Constitutional Petition No. E004 of 2024))

RULING

Background

- 1)** The application dated 9th June 2025, brought pursuant to Rule 4 of the Court of Appeal Rules, 2022, principally seeks an order extending time within which the **Principal Secretary for Internal Security & National**

Administration, Regional Commissioner, North Eastern Region, County Commissioner, Garissa County, Deputy County Commissioner, Lagdera Sub-County, Ministry of Interior and National Administration and Attorney General (the applicants) may file and serve the Notice of Appeal and the Record of Appeal against the judgment of the High Court. The applicants also pray that costs of the application be provided for. The application is supported by the affidavit sworn on the same date by **Mr. Kepha Onyiso**, State Counsel.

Duben Hussein Gurey, Anwar Yussuf Ahmed and Maslah Hussein Gure

are the 1st to 3rd respondents respectively.

- 2) The background to the application is that the respondents had filed a petition challenging the decision of the 3rd applicant to order a repeat of the recruitment exercise of Chief 11 Modogashe Location. Upon hearing the petition, judgment was delivered on 19th December 2024 in favour of the respondents.
- 3) Being dissatisfied with that decision, the applicants expressed their intention to challenge the judgment on appeal. They depose that prior to lodging the intended appeal they were required to seek advice and obtain approval from various government bodies. According to them, by the time those consultations were concluded and the requisite approval granted, the statutory period within which to file the notice of

appeal had already lapsed.

4) The application is opposed. In a replying affidavit sworn on 5th January 2025, the 1st respondent contends that the time frame stipulated under Rule 77 of the Court of Appeal Rules, 2022 within which to lodge the notice of appeal had expired and that no sufficient explanation has been offered to justify the delay.

Determination

5) The question falling for determination is whether the applicants have satisfied the requirements for the exercise of this Court's discretion under Rule 4 of the Court of Appeal Rules, 2022.

6) Rule 4 grants this Court wide and unfettered discretion to extend time limited by the Rules or by any decision of the Court. That discretion, though wide, must be exercised judiciously and upon reason.

7) The locus classicus remains **Leo Sila Mutiso v Hellen Wangari Mwangi**

[1999] 2 EA 231, where the Court held that the factors to be considered include the length of the delay, the reason for the delay, the chances of the intended appeal succeeding and the degree of prejudice to the respondent.

8) The same approach was reiterated in **Fakir Mohamed v Joseph Mugambi**

& 2 Others, [2005] eKLR where the Court observed that although the

discretion under Rule 4 is unfettered, the applicant must place before the Court material upon which the Court can properly exercise that

discretion.

- 9) The Supreme Court similarly articulated the governing principles in **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and**

Boundaries Commission & 7 Others [2014] eKLR, emphasizing that

extension of time is not a right but an equitable remedy available only to a deserving party who has laid a satisfactory basis.

10) More recently, the Court of Appeal has reaffirmed these principles. In

Oloo & 19 Others v Development Bank of Kenya Ltd [2024] eKLR the

Court reiterated that Rule 4 confers wide discretion upon the Court but the applicant bears the burden of demonstrating that the delay is excusable and that the Court's discretion should be exercised in his favour.

11) The applicants attribute the delay to the fact that several Government bodies had to be consulted before a decision could be made on whether to lodge an appeal. According to the applicants, by the time those consultations were concluded and approval granted, the statutory period within which to file the notice of appeal had already lapsed.

12) It is a matter of common notoriety that public institutions often operate through structured decision-making processes requiring consultations and approvals before litigation decisions are made.

13) The next question is whether the delay complained of is inordinate.

14) Under Rule 77(2) of the Court of Appeal Rules, 2022, a Notice of Appeal must be lodged within fourteen (14) days of the decision

intended to be appealed against.

15) In the present case, the notice of appeal ought to have been lodged within fourteen (14) days from the judgment delivered on 19th December 2024. The delay in the present case is approximately five months.

16) Whether delay is inordinate depends on the circumstances of each case.

In ***Mukabi v Mukabi [2004] eKLR*** the Court accepted that explanations

grounded in practical realities may justify delay. Likewise, in ***Anastasius***

H. Kamau v Karen Insurance Brokers Limited [2008] eKLR the Court

held that a delay of three months was not necessarily inordinate where a satisfactory explanation had been given.

17) Considering the explanation offered by the applicants regarding the need to obtain approval from relevant government bodies, I am satisfied that the delay, though not insignificant, cannot in the circumstances be said to be inordinate.

18) The respondent also questions the prospects of the intended appeal. However, it is well settled that a single judge exercising jurisdiction under Rule 4 does not determine the merits of the intended appeal.

19) As was stated in ***Athuman Nusura Juma v Afa Mohamed Ramadhan, [2016] eKLR***, this Court must be careful not to determine with finality the merits of the intended appeal at this stage. It is

sufficient if the Court is satisfied that the intended appeal is not frivolous.

20) Considering the length of the delay, the explanation offered and the absence of demonstrable prejudice to the respondents, I am satisfied that

the applicants have laid a sufficient basis upon which this Court may exercise its discretion under Rule 4 of the Court of Appeal Rules, 2022.

21) Accordingly, the application dated 9th June 2025 is allowed.

22) The applicants shall file and serve the Notice of Appeal and Record of Appeal within fourteen (14) days from the date of this ruling.

23) The costs of the motion shall be in the intended appeal.

Dated and delivered at Nairobi this 6th day of March, 2026.

JAMILA MOHAMMED

.....
JUDGE OF APPEAL

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

DEPUTY REGISTRAR