

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MARSABIT**  
**APPALLATE DIVISION**  
**FAMILY APPEAL NO. E011 OF 2025**

**SURAW MOHAMMED ISSACK.....**

**.....APPELLANT**

**VERSUS**

**ABDIWAHAB  
RESPONDENT**

**NURA**

**ISSACK.....**

**R U L I N G**

**A. Introduction**

- 1.** Vide a ruling delivered on 18.12.2025, the applicant was directed to deposit ***Kshs.500,000/=*** within 60 days as security for this Appeal. When the matter came up for directions on 19.02.2026, he had not done so and his counsel orally requested that the applicant be granted a further 14 days to do so, as he was still in the process of mobilizing the said sums from his relatives and had not deliberately delayed to comply with the earlier court order issued. It was also his contention that no prejudice would be occasioned to the

respondent should the extension be granted and thus prayed that his plea be positively considered.

2. This respondent did oppose this application on the basis that the orders sought were undeserved as the appellant had been given ample time to deposit the sums due to be held as security in this Appeal but had failed to do so. Secondly, the reasons advanced for his failure to do so were not convincing and thus urged the court to dismiss the Appeal under **Order 42 Rule 14(3) of the Civil Procedure Rules**.
3. I have carefully considered the oral submissions made by both counsels and find that the only issues raised is whether time should be extended for the Appellant to deposit the security for this Appeal and/or if the Appeal should be dismissed as requested for by the respondent for the Appellants failure to comply.
4. **Section 95 of the Civil procedure Act, as read together with Order 50 Rule 6 of the Civil Procedure Rules** allows for extension of time, and the court is granted wide discretionary powers to do so. It is also well settled that in general, the matters which this Court takes into account in deciding whether to grant an extension of time or not are: first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the

application is granted. See **Thuita Mwangi V Kenya Airways Ltd [2003] eKLR & Supreme Court in Nicholas Kiptoo Arap Korir Salat v IEBC (2014) eKLR Sup Ct Application No 16 of 2014.**

5. This application has been made promptly and the reasons advanced for the delay are plausible given the hard economic times faced by ordinary citizens in their day to day struggles to put food on the table. Finally on the issue of prejudice, the period requested for is only 14 days and if the applicant fails to deposit security as directed, the respondent will be free to enforce execution of the decree appeal against.
6. Similarly, this appeal cannot be dismissed summarily as that would tantamount to chasing away a litigant who has a right to access court, without him/she being heard.

### **DISPOSTION**

7. Taking all relevant factors into consideration, I do extend time and grant the Appellant a further 14 days within which he should deposit the security for the said appeal as directed on 18.12.2025. Should he fail to do so, the respondent will be at liberty to execute.
8. The costs of this Application will be in the cause

9. It is so ordered.

**READ, SIGNED, and DELIVERED** virtually at **MARSABIT** on this **4<sup>th</sup>** day of **MARCH, 2026**.

**FRANCIS RAYOLA OLEL**  
**JUDGE**

**Delivered** on the **virtual platform, Teams** this **4<sup>th</sup>** day of **MARCH, 2026**.

**In the presence of;**

.....for Applicant

.....for Respondent

.....Court Assistant

ORIGINAL