Kenya Wildlife Service v Wangui (Suing as legal representative of the Estate of James Ng'ang;a - Dcd) (Civil Application E546 of 2025) [2026] KECA 380 (KLR) (27 February 2026) (Ruling)

Neutral citation: [2026] KECA 380 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPLICATION E546 OF 2025

JM NGUGI, JA

FEBRUARY 27, 2026

BETWEEN

KENYA WILDLIFE SERVICE ..... APPLICANT

AND

RUTH WAITHERA WANGUI (SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF JAMES NG'ANG;A - DCD) ..... RESPONDENT

(Being an Application for extension of time arising from the Judgment of the High Court of Kenya at Thika, (Muchemi, J.) dated 31st July, 2025 in Misc. Application No. E002 of 2025)

RULING

1. Before the Court is a Notice of Motion dated 16th September, 2025 in which the Applicant, Kenya Wildlife Service, seeks enlargement of time to file and serve a Notice of Appeal and Record of Appeal against the judgment of the High Court (F. Muchemi, J.) delivered on 31st July, 2025 in Thika High Court Misc. Application No. E002 of 2025.

2. The application is supported by the affidavit of a legal officer of the Applicant sworn on 16th September, 2025. The Respondent did not file a replying affidavit but filed Grounds of Opposition and written submissions.

3. At the outset, it must be observed that "grounds of opposition" are not a pleading recognised by the Court of Appeal Rules, 2022. However, in keeping with the Court's obligation to determine matters on substance rather than form, I have nonetheless considered the substance of the objections raised therein alongside the Respondent's written submissions.

4. The discretion the Court is invited to exercise is conferred by Rule 4 of the Court of Appeal Rules, 2022, which provides:

> " 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."

5. Although Rule 4 does not enumerate the factors to be considered, the principles guiding the exercise of this discretion are now well settled. In Leo Sila Mutiso v Rose Hellen Wangari Mwangi [1999] 2 EA 231, this Court stated:

> " It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. 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 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."

6. Those principles were later affirmed and placed within a broader equitable framework by the Supreme Court in Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR, where the Court emphasised that extension of time is not a right but an equitable remedy to be granted on a case-by-case basis, guided by the interests of justice.

7. Before applying those principles, it is useful to briefly summarise the rival positions of the parties. The Applicant contends that the impugned judgment was delivered on 31st July, 2025 and that instructions to appeal were given in good time. However, both in the Affidavit of Urgency sworn by its advocate and in the supporting affidavit sworn by its Legal Officer, the Applicant makes a candid admission that "the delay of filing this appeal was occasioned by oversight on the part of the Applicant's Advocate caused by exigencies of work, understaffing of the Applicant and inadvertent mistake." The Legal Officer further depones that "upon realising this delay, the Applicant's Advocate acted promptly by making this application without any further delay." The Applicant, therefore, does not disingenuously attribute the delay to registry processes or external obstacles, but squarely to internal advocate error, and pleads with the Court not to visit that mistake upon an otherwise diligent litigant. The Applicant further contends that the intended appeal raises arguable questions of law, particularly regarding the propriety of the order of mandamus compelling payment of Kshs. 5,000,000/=.

8. The Respondent, on the other hand, submits that the delay is inordinate and inexcusable. It is argued that under the Rules, the Applicant had fourteen days from 31st July, 2025 to file a Notice of Appeal, which period lapsed on 14th August, 2025. The Respondent points out that the Applicant only filed a Notice of Appeal on 10th September, 2025, and complains that this was done without leave of Court, and only moved the Court on 16th September, 2025. On that basis, the Respondent contends that there is no valid Notice of Appeal and that this Court lacks jurisdiction to entertain the present application.

9. I now turn to the structured analysis mandated by our Rule 4 jurisprudence. On the length of the delay, the impugned judgment was delivered on 31st July, 2025. The statutory period for filing a Notice of Appeal expired on 14th August, 2025. The Applicant filed a Notice of Appeal on 10th September, 2025 and filed the present application on 16th September, 2025. The delay, therefore, is approximately twenty-four days beyond the prescribed period, calculated from the lapse of the statutory period on

14th August, 2025 to the filing of the present application on 16th September, 2025. While this delay is not negligible, it is not, in absolute terms, inordinate.

10. As regards the reason for the delay, what stands out in this case is not evasion, deflection, or shifting explanations, but a rare degree of candour. The Applicant does not seek refuge in invented registry inefficiencies or procedural obscurities. Instead, both its advocate and its Legal Officer forthrightly admit that the delay was occasioned by oversight, exigencies of work, understaffing, and inadvertent mistake on the part of counsel. That explanation is not embellished, qualified, or sanitised. It is an unvarnished acceptance of professional default. Courts have repeatedly held that although a litigant is ordinarily bound by the acts and omissions of counsel, that principle is not absolute and must yield where its rigid application would occasion injustice. In Philip Keipto Chemwolo & Another v Augustine Kubende [1986] KLR 495, this Court observed:

> " Blunders will continue to be made from time to time, and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case heard on merit."

Similarly, in Fakir Mohamed v Joseph Mugambi & 2 Others [2005] eKLR, the Court emphasised:

> " The discretion under Rule 4 is unfettered and should be exercised upon consideration of all the circumstances of the case, including the conduct of the parties and the need to do justice."

Viewed in that light, the explanation offered here is not only reasonable but institutionally healthy: it reflects professional accountability rather than procedural opportunism. Coupled with the relatively short period of delay and the prompt corrective action once the omission was realised, the explanation does not disclose bad faith, indolence, or abuse of process, but rather a human error candidly acknowledged and responsibly addressed.

11. Turning to arguability, the Applicant challenges an order of mandamus compelling it to pay Kshs. 5,000,000/= to the Respondent pursuant to recommendations under the *Wildlife Conservation and Management Act*. Whether the High Court properly exercised its jurisdiction in issuing that order, and whether the statutory scheme permits such compulsion in the circumstances of the case, are plainly arguable questions of law. At this stage, the Court is not concerned with the ultimate merits of the appeal, only that it is not frivolous.

12. On prejudice, the Respondent has not demonstrated any specific prejudice that cannot be compensated by an award of costs. While the Respondent is entitled to enjoy the fruits of her judgment, that interest must be balanced against the Applicant's right of appeal, especially where the delay is modest and the intended appeal raises arguable issues.

13. The Respondent's principal argument is that there is no valid Notice of Appeal and that, consequently, this Court lacks jurisdiction to entertain the present applicaiton. That submission, in my view, misconceives the scope of Rule 4. The very purpose of Rule 4 is to empower the Court to regularise procedural defaults, including late filing of a Notice of Appeal. To insist on a valid Notice of Appeal as a precondition for invoking Rule 4 would render the provision largely otiose.

14. Balancing all these considerations — the length of the delay; the candid explanation offered; the arguability of the intended appeal; and the absence of demonstrated prejudice — I am satisfied that this is a proper case for the exercise of discretion under Rule 4. To deny the extension sought would elevate procedural default over substantive justice in the circumstances of this case.

15. Accordingly, the application is allowed. The Applicant is granted leave to file and serve a Notice of Appeal and Record of Appeal out of time. The Notice of Appeal shall be filed and served within seven (7) days of the date hereof, and the Record of Appeal within fourteen (14) days thereafter. Costs shall abide the outcome of the appeal.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY, 2026.

JOEL NGUGI

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR