

**IN THE COURT OF  
APPEAL AT  
NAIROBI**

**CORAM: JOEL NGUGI JA (IN  
CHAMBERS) CIVIL APPLICATION NO.  
E519 OF 2025**

**BETWEEN**

**PARAGON ELECTRONICS LIMITED.....1<sup>ST</sup>  
APPLICANT  
BULENT GULBAHAR.....2<sup>ND</sup>**

**APPLICANT AND**

**I & M BANK LIMITED (FORMERLY  
INVESTMENT AND MORTGAGE BANK.....1<sup>ST</sup>  
RESPONDENT VELOS ENTERPRISES LIMITED... 2<sup>ND</sup>  
RESPONDENT  
THE CHIEF LANDS REGISTRAR  
MINISTRY OF LANDS.....3<sup>RD</sup> RESPONDENT  
NAIROBI CITY COUNTY GOVERNMENT.....4<sup>TH</sup>  
RESPONDENT**

*(Being an Application for extension of time to Appeal against Judgment  
of the Environment and Land Court at Nairobi, (Mboya, J.) dated 16<sup>th</sup>  
October, 2023*

*in*

**ELC Case No. E315 of 2022)**

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**RULING**

1. Before the Court is the Applicants' Notice of Motion dated 19<sup>th</sup> August, 2025 seeking extension of time within which to file and serve an appeal against the ruling of the Environment and Land Court (*Oguttu Mboya, J.*) delivered on 16<sup>th</sup> October, 2023.
2. The application is brought under Rule 4 of the Court of

Appeal Rules, 2022 and is supported by the affidavit of Bulent Gulbahar sworn on behalf of the Applicants. The 1<sup>st</sup>

Respondent opposed the application through a replying affidavit and written submissions. The other Respondents did not file any response despite evidence of due service.

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

***“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.”***

4. Although the Rule itself 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.”***

5. Those principles were subsequently affirmed and contextualised by the Supreme Court in ***Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR***, where the Court underscored that extension of time is an equitable remedy to be granted on a case-by-case basis, guided by the interests of justice.
6. Before turning to the application of those principles, it is useful to briefly summarise the rival positions taken by the parties. The Applicants contend that they were diligent and that any delay in filing the Record of Appeal is wholly attributable to the inaction of their former advocates. They state that a Notice of Appeal was lodged promptly on 17<sup>th</sup> October, 2023 and that proceedings were applied for without delay. However, despite repeated follow-ups, the former advocates failed to collect the proceedings, seek a certificate of delay, or prepare the Record of Appeal. The Applicants further state that it was only in May, 2025, upon perusal of the court file by their newly instructed advocates, that they discovered that the Registry had notified the former advocates as early as 9<sup>th</sup> December, 2024 that the proceedings were ready. They contend that they acted with dispatch upon that discovery and should not be penalised for their advocates' default.

7. The 1<sup>st</sup> Respondent, on the other hand, submits that the delay is inordinate and inexcusable. It is argued that the Applicants were indolent; that they ought to have been more vigilant; and that the delay should be attributed to them rather than to counsel. The 1<sup>st</sup> Respondent further challenges the arguability of the intended appeal and urges the Court to decline the exercise of discretion, contending that the Notice of Appeal should be deemed withdrawn.
8. I now turn to the application of the governing principles. On the length of the delay, the impugned ruling was delivered on 16<sup>th</sup> October, 2023. The Notice of Appeal was lodged the following day. What is in issue is the failure to file the Record of Appeal within time. The Respondent emphasises that the Registry notified the Applicants' former advocates on 9<sup>th</sup> December, 2024 that the proceedings were ready, and that the present application was not filed until after the Applicants, through their newly instructed advocates, perused the court file in May, 2025 and became aware of that notification. While the lapse of time is not insignificant, it must be assessed in context rather than in the abstract.
9. As regards the reason for the delay, the explanation offered by the Applicants is detailed and internally consistent. The Applicants' former advocates took the initial procedural steps but thereafter failed to act. The Applicants maintain that they made follow-ups and only discovered, through the intervention of newly instructed counsel in May, 2025, that the proceedings had long been

ready. Upon that discovery,

they moved with reasonable promptitude. While it is true that litigants bear ultimate responsibility for their cases, the law does not demand that they exercise constant supervision over every administrative step taken by counsel. The explanation advanced is not evasive or contrived; it discloses reliance on counsel and a belated but *bona fide* discovery of default.

10. 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 that blunders will continue to be made and that it does not necessarily follow that a party should be shut out from the seat of justice because of a mistake. Similarly, in ***Fakir Mohamed v Joseph Mugambi & 2 Others [2005] eKLR***, the Court emphasised that the discretion under Rule 4 is wide and must be exercised upon consideration of all the circumstances of the case.

11. Turning to arguability, the Applicants have annexed a Draft Memorandum of Appeal raising a jurisdictional question: whether the Environment and Land Court erred in striking out the suit on the basis that it concerned only the charge and discharge of a charge, notwithstanding pleadings alleging illegality, fraud, rectification of the register, and claims for compensation, issues which the Applicants insist were predominant in the case. Jurisdiction is a foundational issue. The question whether the learned

Judge properly appreciated

the true nature of the dispute is plainly arguable and deserving of consideration on appeal. At this stage, the Court is not required to pronounce on the ultimate prospects of success.

12. On prejudice, the 1<sup>st</sup> Respondent has not demonstrated any specific prejudice that cannot be compensated by an award of costs. The prejudice asserted is largely procedural and relates to the passage of time. On the other hand, denying the Applicants an opportunity to ventilate an arguable appeal arising from a dismissal on jurisdictional grounds would occasion disproportionate prejudice.

13. Balancing all these considerations — the length of the delay, the 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 in the circumstances of this case would be to elevate procedural default over substantive justice.

14. Accordingly, the application 19<sup>th</sup> August, 2025 is allowed. The Applicants shall file and serve the Record of Appeal within fourteen (14) days of the date hereof. Costs shall abide the outcome of the appeal.

**Dated and delivered at Nairobi this 27<sup>th</sup> day of February, 2026.**

**JOEL NGUGI**

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

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

***Signed***  
**DEPUTY REGISTRAR**