



**University of Nairobi v Ricatti Business College of East Africa (Civil Appeal (Application) E566 of 2021) [2026] KECA 418 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KECA 418 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) E566 OF 2021  
JM NGUGI, JA  
FEBRUARY 27, 2026**

**BETWEEN**

**UNIVERSITY OF NAIROBI ..... APPELLANT**

**AND**

**RICATTI BUSINESS COLLEGE OF EAST AFRICA ..... RESPONDENT**

*(Being an Application for Stay of Execution pending the hearing and determination of an Appeal against the entire Judgment of the High Court of Kenya at Nairobi, (Tuiyott, J.) dated 6th December, 2019 in HCCC No. 73 of 2015)*

**RULING**

1. This is a single-judge application brought under Rule 4 of the Court of Appeal Rules seeking extension of time to file and serve a reference out of time from the ruling of a single Judge delivered on 28<sup>th</sup> April, 2022. The motion dated 6<sup>th</sup> November, 2025 originally contained several prayers, including prayers for stay of proceedings and for priority listing. However, by subsequent correspondence with the Court and as confirmed in the Applicant's supplementary submissions, all prayers save for that seeking extension of time were abandoned. The only issue that now properly falls for determination is whether this Court should extend time to permit the filing of a reference out of time. The inclusion and later abandonment of multiple prayers, it must be noted, is itself not a trivial procedural footnote but it is one of several features that reflect the protracted and, at times, irregular procedural path this matter has followed.
2. The history of the matter must be recounted at some length, for in applications of this nature chronology is not background: it is substance. Judgment giving rise to the intended appeal was delivered on 6<sup>th</sup> December, 2019. In accordance with the rules, the Applicant timeously filed its Notice of Appeal and a letter requesting certified copies of proceedings on 13<sup>th</sup> December, 2019 and served both on 18<sup>th</sup> December, 2019, thus within the prescribed period. The certified proceedings were



supplied on or about 24<sup>th</sup> August, 2021 as confirmed by a Registrar's Certificate of Delay of even date. The Record of Appeal was filed on 1<sup>st</sup> October, 2021, which is approximately forty-four days after receipt of the proceedings.

3. Earlier still, on 13<sup>th</sup> February, 2020, the Applicant had moved this Court for stay of execution pending appeal, and in a ruling delivered on 7<sup>th</sup> August, 2020 the Court granted stay on condition that the Applicant deposit the decretal sum of Kshs. 7,492,550 as security, a condition with which the Applicant complied. The Record of Appeal was subsequently served on the respondent on 8<sup>th</sup> November, 2021, about one month outside the period prescribed for service, which delay the Applicant attributed to logistical and technical difficulties arising during the Judiciary's transition to electronic filing systems amid the COVID-19 period. On that same date the Applicant filed an application seeking extension of time to serve, not to file, the Record of Appeal. In a ruling delivered on 28<sup>th</sup> April, 2022, a single Judge (Murgor, JA) declined to extend time for service.
4. Dissatisfied with that decision, the Applicant filed a further application dated 5<sup>th</sup> May, 2022 seeking rescission and setting aside of the orders of 28<sup>th</sup> April, 2022 and substitution thereof with an order allowing the earlier motion. On 16<sup>th</sup> June, 2023 another single Judge (Omondi, JA), noting that the impugned ruling had been authored by a colleague, directed that the matter be placed before Murgor, JA. The application dated 5<sup>th</sup> May, 2022 was, thereafter, heard by Murgor, JA who, in a ruling delivered on 26<sup>th</sup> April, 2024, held that the application ought properly to have been brought before a full bench by way of reference under Rule 57(1)(b) of the Court of Appeal Rules, 2022, and declined to grant the relief sought. Following that ruling the Applicant filed a reference on 2<sup>nd</sup> May, 2024 seeking placement of the matter before a full bench. That reference was later withdrawn on 3<sup>rd</sup> November, 2025 after it was acknowledged that it had been filed out of time. Three days later, on 6<sup>th</sup> November, 2025, the present application was filed. The pertinent sequence is, therefore, undisputed: a ruling capable of reference delivered in April, 2022; a reference filed only in May, 2024 out of time; withdrawal of that reference in November, 2025, and this application filed thereafter.
5. The Applicant contends that notwithstanding this chronology the delay is excusable. It argues that the Court's own directions contributed to procedural uncertainty and that it acted diligently once clarity was obtained. It maintains that the procedural difficulty concerned service rather than filing, that it moved promptly after the Court indicated the appropriate procedural route, and that the Respondent will suffer no prejudice because it has long possessed the record of appeal. It invokes the broad discretionary power conferred by Rule 4 and urges that discretion be exercised in the interests of substantive justice and in accordance with Article 159(2)(d) of *the Constitution*. In support of that approach, counsel relied on *Muringa Company Limited v Archdiocese of Nairobi Registered Trustees* [2020] eKLR, where the Court reiterated that extension of time is discretionary and case-specific, and that the Court considers the length of delay, reasons for delay, prejudice, and the overall justice of the matter. Counsel also relied on *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, where the Court emphasised that there is no rigid minimum or maximum delay; what matters is whether the delay is explained to the satisfaction of the Court. In addition, counsel cited *Peter K. Kairu t/a Kairu & Company Advocates v Anne Marie Cassiede & another* [2017] eKLR for the proposition that the Court retains power to prevent injustice where a mistake is demonstrated and the circumstances justify the exercise of discretion in favour of a party. Although the Applicant's original submissions also referred to *Butt v Rent Restriction Tribunal* [1982] KLR 417 on the principles for stay, that authority is of marginal relevance now that the only surviving prayer is the extension of time to file a reference.
6. The Respondent opposes the application. It submits, first, that the motion was initially framed incompetently by combining distinct prayers and invoking jurisdictions that were not properly before



a single Judge; and that it is only at a late stage that the Applicant abandoned all prayers except extension of time. Substantively, the Respondent maintains that the delay is inordinate, unexplained, and symptomatic of a litigant who, despite being represented throughout, repeatedly chose the wrong procedural route. In that regard, the Respondent relied on *Laban Owino Ochieng v Awanad Enterprises Limited & 2 others* [2025] KECA 757 (KLR), in which the Court underscored that an applicant for extension bears the burden to lay a basis to the satisfaction of the Court and that, where a defect is brought to a party's attention, the party must move expeditiously to remedy it rather than wait for matters to unravel and then seek indulgence. The Respondent also relied on *Mary Waruga Wokabi & 3 others v Jacob Mwanto Wangora* [2019] eKLR, where the Court stated in substance that wrong advice by counsel, without more, is not a sufficient ground for extension of time, particularly where the delay is prolonged. It further invoked decisions such as *Habo Agencies Limited v Wilfred Odhiambo Musingo* [2015] eKLR for the proposition that a litigant cannot simply blame counsel for all defaults and must demonstrate personal diligence in following up the conduct of the case.

7. The application is brought under Rule 4 of the Court of Appeal Rules 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 authorised or required by these Rules, whether before or after the doing of the act...”

8. The governing principles for the exercise of that discretion have long been settled. In *Leo Sila Mutiso v Rose Wangari Mwangi* (Civil Application No Nai 255 of 1997) [1999] 2 EA 231 the 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.”

9. Those factors have been repeatedly affirmed in this Court and situated within a broader constitutional framework. In *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR the Supreme Court stressed that extension of time is an equitable remedy, not a right, and that a party seeking it bears the burden of laying a proper basis for the Court's discretion. Similarly, in *Fakir Mohammed v Joseph Mugambi & 2 others* [2005] eKLR this Court observed that the discretion under Rule 4 is unfettered but must be exercised judicially and on reason, guided by such factors as period of delay, explanation, arguability, and prejudice.

10. The first consideration is the length of the delay. The impugned ruling was delivered on 28<sup>th</sup> April, 2022. This application was filed on 6<sup>th</sup> November, 2025. The delay, therefore, exceeds three years. Such delay is not merely lengthy; it is substantial. Where delay is of that magnitude, a correspondingly weighty explanation is required. That proposition accords with authorities such as *Thuita Mwangi v Kenya Airways Ltd* [2003] eKLR, which emphasise that a satisfactory explanation for delay is the cornerstone of the Court's discretion.

11. The second consideration is the explanation for the delay. The Applicant attributes it largely to procedural misunderstanding and to its attempt to comply with judicial guidance. Yet the record reveals a pattern that cannot be described as a single inadvertent lapse. Instead, what emerges is a succession of procedural choices that did not accord with the Rules. The proper procedure after the ruling of April 2022 was the timeous filing of a reference. That was not done within time. Inexplicably, an application seeking rescission was filed instead. That application was dismissed. A reference was



eventually filed two years later. That reference was then withdrawn because it had been filed out of time. Only thereafter was the present motion filed. The narrative that the delay was caused by the Court is, therefore, not borne out by the chronology and is, with respect, disingenuous. Judicial clarification of procedure cannot be equated with judicial responsibility for delay. Indeed, as illustrated in *Laban Owino Ochieng v Awanad Enterprises Limited & 2 others* [2025] KECA 757 (KLR), where a party is alerted to a procedural defect, diligence requires prompt corrective action, not prolonged procedural detours. Likewise, *Mary Waruga Wokabi & 3 others v Jacob Mwanto Wangora* [2019] eKLR demonstrates that wrong advice, without prompt and candid remedial steps, does not suffice where delay is substantial.

12. The third consideration concerns the arguability of the intended reference. This factor is secondary and is rarely decisive where delay is inordinate. Arguability does not mean probable success; it means only that the matter is not frivolous. Even assuming arguability, that factor cannot compensate for prolonged delay that remains insufficiently explained in this case.
13. The fourth consideration is prejudice. In this case, the decree in question dates back to 2019. Litigation must, at some point, attain finality. The longer a matter remains unresolved, the greater the prejudice that presumptively arises. Finality is not a technical aspiration; it is a central value of adjudication.
14. I am alive to the principle, affirmed in some of the authorities cited by the Applicant, that litigants should not invariably be punished for the errors of their advocates and that courts possess jurisdiction to prevent injustice. Those propositions are sound. But their application depends on context. The Court has equally warned, in decisions such as *Habo Agencies Limited v Wilfred Odhiambo Musingo* [2015] eKLR, that a litigant cannot hide indefinitely behind counsel's mistakes and must demonstrate diligence. Discretion must, therefore, be exercised judicially, not indulgently, and it cannot be invoked to normalize a pattern of procedural misdirection.
15. Standing back and considering the matter at hand, what emerges is a case marked by prolonged delay and repeated procedural misdirection. The application is the latest step in a sequence that began in 2019 and has since traversed a circuitous procedural course. What the record discloses is not an isolated lapse but a sustained pattern of procedural inattention that the Court cannot ignore in the exercise of its discretion. The principles articulated in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others* [2014] eKLR and *Fakir Mohammed v Joseph Mugambi & 2 others* [2005] eKLR reinforce that extension of time is an equitable indulgence granted on demonstrated grounds. In the circumstances of this case, the explanation tendered does not meet that threshold. To grant extension here would risk conveying the impression that time limits in appellate litigation are elastic and that compliance with the Rules is optional. That is not the purpose of Rule 4. The discretion it confers is wide, but it is not unstructured, and it must be exercised in a manner that upholds, rather than undermines, the orderly administration of justice.
16. In the result, the Applicant has not placed before the Court a satisfactory explanation for the inordinate delay. Additionally, extension of time in the circumstances of this case would unduly prejudice the respondent. Consequently, the threshold for the exercise of discretion in its favour has not been met.
17. The application dated 6<sup>th</sup> November, 2025 is, therefore, dismissed with costs to the Respondent.

**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**

