

**IN THE COURT OF APPEAL  
AT NAKURU**

**(CORAM: MATIVO, JA (IN CHAMBERS))**

**CIVIL APPLICATION NO. NAK E001 OF**

**2026 BETWEEN**

**COUNTY GOVERNMENT OF NAKURU.....APPLICANT**

**AND**

**ANIL WALIA.....RESPONDENT**

*(Being an application for leave to lodge and serve notice of appeal from the judgment of the Environment and Land Court of Kenya at Nakuru (M. A. Odeny, J.) dated 4<sup>th</sup> July 2024*

*in*

***ELC Case No. E037 of  
2020).***

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**RULING**

1. The applicant in its application dated 14<sup>th</sup> January 2026 prays for extension of time to file and serve its notice of appeal against the decision rendered by *Odeny, J* on 4<sup>th</sup> July 2024.
2. The key grounds in support of the application are: (a) the applicant filed and served a notice of appeal on 17<sup>th</sup> July 2024; (b) typed proceedings were collected on 20<sup>th</sup> May 2025; (c) certificate of delay was issued on 17<sup>th</sup> June 2025; (c) however, the period for filing the appeal had lapsed, necessitating this application.

3. In opposition to the application, the respondent filed the replying affidavit dated 16<sup>th</sup> January 2026 sworn by Githui John Advocate. The salient averments are: (a) counsel never prepared a draft decree and or forwarded it to the respondent's advocate as required by Order 21 Rule 8 of the Civil Procedure Rules, 2010;
- (b) the explanation that the applicant's counsel was unwell is not plausible since the respondent's offices has more than one counsel; (c) compliance of timelines is central to the efficient administration of justice.
4. The applicant filed a supplementary affidavit dated 22<sup>nd</sup> January 2026 sworn by Maureen Litunda, Advocate contending that she was attending a sick parent.
5. In support of the application, the respondent filed submissions dated 22<sup>nd</sup> January 2026 essentially contending that the notice of appeal was filed within time. However, the record of appeal was not filed in time and relied on **Andrew Kiplangat Chemaringo** **vs. Paul Kipkorir Kibet [2018] KECA 701 (KLR)** in support of the proposition that there is no minimum or maximum period of delay. The applicant also cited **Philip Kiptoo Chemwolo & Ano.** **vs Augustine Kubende [1982-88] KLR 103** in urging that

blunders are bound to occur.

6. Further, counsel maintained that the appeal has high chances of success, and relied on **Stanley Kangethe Kinyanjui vs. Tony Ketter & 5 Others [2013] eKLR** which defined an arguable appeal as not one which would necessarily succeed but one which is not frivolous. Lastly, counsel maintained that no prejudice will be suffered by the respondent.
7. The respondent filed submissions dated 23<sup>rd</sup> January 2026 citing authorities laying down the applicable principles in an application of this nature which I have considered and maintained that the delay has been sufficiently explained.
8. A reading of the applicant's application reveals a glaring pertinent issue. The applicant prays for extension of time to file a notice of appeal. But in its affidavit and submissions, the applicant states that the notice of appeal was filed within time but the record of appeal was not filed. There is no prayer in the application seeking extension of time to file the appeal. Applications must be supported by evidence—typically in a supporting affidavit—that directly aligns with the prayers sought. Seeking "*wrong*" or unsupported prayers is a procedural defect that can lead to an application being dismissed for lack of merit or competence.

9. The High Court in **Maiyo vs. Too (Civil Appeal E179 of 2024) [2024] KEHC 14286** dismissed prayers for review because the applicant failed to address those specific prayers in either the supporting affidavit or the submissions. The Court noted it "*cannot exercise its discretion in a vacuum*" and that asking for a decision without evidentiary support is asking the Court to "*make a decision on nothing.*" This Court in **Sol Electronics Kenya & 2 Others vs. Raikundalia & Ano. [2025] KECA 970** reinforced the principle that there must be a clear nexus between the pleadings (like a plaint or an application) and the reliefs sought. The applicant should have applied for extension of time to file the appeal as opposed to extension of time to file the notice of appeal which it says was already filed. On this ground alone, this application is for dismissal. Accordingly, I dismiss it with no order as to costs

**Dated and delivered at Nakuru this 17<sup>th</sup> day of March, 2026.**

**J. MATIVO**

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**. JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR.**