



Kadima t/a Kadima & Company Advocates v Kedong Ranch Limited (Civil Application E231 of 2025) [2026] KECA 568 (KLR) (16 March 2026) (Ruling)

Neutral citation: [2026] KECA 568 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E231 OF 2025**

JM MATIVO, JA

MARCH 16, 2026

BETWEEN

**FRANCIS MO KADIMA T/A KADIMA & COMPANY
ADVOCATES APPLICANT**

AND

KEDONG RANCH LIMITED RESPONDENT

(Being an application for extension of time and deem the record of appeal as properly filed from the judgment of the High Court of Kenya at Nakuru (S. M. Mubochi, J.) dated 18th April 2024 in MISC. CC. APPL. No. 195 of 2016)

RULING

1. The applicant in the application dated 23rd January 2026 prays for: (a) an order deeming the letters requesting for typed proceedings dated 24th April 2024, 19th February 2025, 29th April 2025 and 30th October 2025 as admitted and duly served out of time; (b) upon the granting of prayer (a) above, the record of appeal herein filed by the applicant on 17th December 2025 and served upon the respondent on even date be deemed to have been duly and properly filed and served, (c) that this Court do issue any other orders it may deem fit to grant and (d) the costs of this application be in the cause.
2. The key grounds urged by the applicant is that owing to inadvertence error, the above letters were not served upon the respondent's counsel.
3. In response to the application, the respondent filed the affidavit of Stanley Kinyanjui dated 2nd February 2026. The key highlights are: (a) the application is a kneejerk reaction to Civil Application dated 13th January 2026 seeking the applicant's notice of appeal and memorandum of appeal to be struck out; (b) the record of appeal was not filed within time nor is it accompanied by a valid certificate of delay; (c) the reasons offered in this application are inconsistent with the response filed in the application for striking out the appeal.



4. In support of the application, the applicant's counsel maintained that the delay has been explained, that the appeal is arguable, that if the orders sought are declined they will suffer prejudice and that the interests of justice favour granting the orders sought. The applicant cited four decisions of this Court in support of the application which I am not only familiar with but I have considered them as well.
5. The respondent's submissions are essentially on factual matters.
The respondent cited two decisions at paragraphs 6 and 7 of the submissions which I have considered.
6. Rules 4 of the Court of Appeal Rules, 2022 provides that: "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." The Supreme Court in *Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR summed up the applicable considerations as follows:
 - i. Extension of time is not right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
 - ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court;
 - iii. Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case-to- case basis;
 - iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 - v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - vi. Whether the application has been brought without undue delay; and,
 - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
7. Decided cases are in agreement that a plausible, reasonable, and comprehensive explanation for the delay is a crucial, though not sole factor that triggers the Court's discretion to grant extension of time. Courts operate on the principle that if there is no reasonable explanation for the delay, the indulgence will generally not be granted, even if the appeal has prospects of success. Therefore, an applicant must provide a "good cause" or "sufficient cause," which means a full and reasonable explanation that covers the entire period of the delay. A vague or incomplete explanation or a mere excuse will not trigger the discretion to condone the delay. (See *Silber vs. Ozen Wholesalers (Pty) Ltd* 1954 (2) SA 345 (A)).
8. I must underscore that condonation for delay is not a right and that "hard-earned judgments" should not be lightly disturbed or enjoyment of the fruits of the judgment delayed. A party must show valid reason(s) for the laxity. The investigation into the reasonableness of the delay is a factual enquiry. However, once a "plausible explanation", is found to exist, it enables the Court to look at other factors, like prospects of success so as to exercise its discretion.
9. To be deemed "plausible" and trigger the Court's discretion the applicant generally must show:
 - (a) That the delay was not due to negligent inaction.



- (b) The delay must be accounted for by factors beyond the applicant's control (e.g., waiting for transcripts, severe illness, or genuine attorney negligence, though the latter is viewed critically).
 - (c) It must cover the entire period of the delay. Explaining only part of the period of delay is "far from satisfactory" and most likely, it will not justify the extension.
 - (d) the reason(s) must not be "fictitious" or "calculated" delay the case.
 - (e) The Court requires honesty in the explanation. This list is not exhaustive.
10. The guiding threshold is clearly set out in Rule 4 which is "on such terms as may be just" which means the standard is the "interests of justice," which requires balancing the explanation for the delay, the prospects of success, the importance of the case, and prejudice to the parties. A plausible explanation, however, is the "key that unlocks the door" to this balancing exercise. If the explanation for the delay is not plausible (i.e., it is weak, contradictory or nonexistent), the Court usually will not exercise its discretion to extend time, even if the appeal has merit. A good explanation for a delay is often needed to satisfy the "good cause" requirement.
 11. I have looked at the reasons provided by the applicant highlighted earlier and the threshold set out in paragraphs 9 and 10 above. The judgment sought to be appealed against was delivered on 18th April 2024. The letters sought to be validated are all dated 2025, the earliest being 24th April 2024, over one year after the delivery of the judgment. It has been said that the applicant is reacting to the respondent's application to strike out their appeal. This long delay has not been satisfactorily accounted for.
 12. While Courts possess unfettered discretion to extend time in the interests of justice, an unsatisfactory or implausible explanation is held as a sufficient standalone ground to refuse the application, regardless of the merits of the underlying appeal. Therefore the "reason for delay" is a fundamental pillar of any application for an extension of time (or condonation).
 13. Decisions from this Court and the Supreme Court emphasize that extensions are a discretionary favor, therefore, courts require a "plausible and satisfactory explanation". The Supreme Court in *Nicholas Kiptoo Arap Korir Salat vs. IEBC* (supra) underscored that the burden is on the applicant to satisfy the Court. An unreasonable or an unexplained delay leads to dismissal. In *Habo Agencies Limited vs. Wilfred Odhiambo Musingo* [2016] KECA 477 (KLR), a three-judge bench up held a decision of a single judge emphasizing that shifting blame to counsel without showing personal diligence is insufficient. Other key decisions like *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] KECA 701 is a cornerstone for the principle that while there is no fixed "maximum" or "minimum" period of delay, a plausible and satisfactory explanation is essential to "unlock the Court's flow of discretionary favour". Without such an explanation, a court may refuse an extension even if the delay appears short or conversely, may grant one for a long delay if the reasons are compelling. The bottom line is an unsatisfactory or vague reason for delay is a critical factor in refusing an extension. I am not persuaded that the reason offered is satisfactory. The upshot is that the application dated 23rd January 2026 is dismissed with costs to the respondents.

DATED AND DELIVERED AT NAKURU THIS 16TH DAY OF MARCH, 2026.

J. MATIVO

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

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

Signed.



DEPUTY REGISTRAR.

