

**IN THE COURT OF  
APPEAL AT NAKURU**

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

**CIVIL APPLICATION NO. NAK E141 OF**

**2025 BETWEEN**

**MICHAEL KANDIE KANGOGO.....APPLICANT**

**AND**

**MOHAMED CHEBOI & 5 OTHERS.....RESPONDENTS**

*(Being an application for leave to file and serve notice of appeal from the judgment of the High Court of Kenya at Kabarnet (R.*

***Ngetich, J.)** dated 9<sup>th</sup> October 2025*

*in*

***Civil Appeal No. E009 of 2024).***

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**RULING**

1. Michael Kandie Kangogo (the applicant) in his “*omnibus*” application dated 17<sup>th</sup> December 2025 has approached this Court seeking orders which ordinarily under the Rules of this Court can only be granted by a single judge and orders which are only available from a full bench of this Court. The term “*omnibus application*” typically refers to a single application in which a party seeks multiple, often unrelated or distinct, forms of relief. Courts have consistently warned that bundling too many distinct prayers into one application can obscure the true nature of the relief sought, making it difficult for the

respondent to answer effectively.

I must emphasize that the Rules of Court exist to ensure a fair and orderly ventilation of disputes. An omnibus application that bypasses specific procedural requirements must be abhorred, especially if one prayer depends on the outcome of the other relief sought. It also creates an untidy situation whereby if the single judge prayer is allowed, the application is “*partially determined*” necessitating referral to a full bench for determination of the other prayers.

2. Accordingly, I will only address prayer 2 of the application which falls within the jurisdiction of a single judge. In the said prayer, the applicant prays for extension of time within which he may file and serve the notice of appeal against the whole of the judgment and decree of the High Court at Kabarnet (*Ngetich, J.*) delivered on the 9<sup>th</sup> day of October 2025 in Civil Appeal No. E009 of 2024, and that the notice of appeal annexed thereto be deemed as duly filed and served within the prescribed time upon such terms as this Court may deem fit.
3. In support of the application, the applicant states that: (a) he only learned about the delivery of the judgment through an informal conversation with the respondents on 2<sup>nd</sup> December 2025 who informed him that they had lodged a party-to-party bill of costs against him; (b) the delay in filing the notice of appeal is attributed

to circumstances beyond the applicant's control, which is a breakdown in communication with his previous Advocates Ngaiywa & Kibet Partners LLP, whose principal Advocate one Mr. Vincent Kibet Kemboi entered politics and became the Speaker of the Baringo County Assembly, resulting in unanswered telephone calls and lack of updates despite the applicant's diligent efforts to inquire; (c) after the signing of the consent for change of advocates, the current Advocates applied for certified copies of the typed proceedings and judgment and paid the requisite fees on the 16<sup>th</sup> day of December 2025, (d) the delay spans from 2<sup>nd</sup> December 2025 to 18<sup>th</sup> December 2025 and it has been sufficiently explained, warranting an extension of time in the interests of justice; (e) the intended appeal is arguable and raises substantial questions of law and fact including but not limited to errors in the evaluation of evidence, misapprehension of facts and failure to uphold the Magistrate's findings as particularized in the annexed draft memorandum of appeal and it has high prospects of success.

4. In response to the application, the respondents filed the replying affidavit dated 16<sup>th</sup> January 2026. The salient averments are: (a) the applicant has not furnished this Court with anything tangible to demonstrate attempts to reach out to

his counsel upon learning

the outcome of the appeal in the High Court; (b) the Speaker of Baringo County was elected in the year 2022 during the electioneering period when this matter was still active in the trial Court and prior to his election as the Speaker, he was not actively involved in the matter as Advocate Kiptoo of Chepkilot, Kiptoo & Co. Advocates prosecuted the matter in the Magistrate's Court while Counsel Musanzu practising in the firm of Ngaywa & Kibet Partners LLP defended the appeal in the High Court; (c) therefore, it is not true that the office of the Speaker Baringo, County fell vacant when judgment of the High Court was delivered on the 9<sup>th</sup> October 2025; (d) by the time the applicant was processing change of advocates and proceedings, time to file a notice of appeal had long lapsed, therefore, the activities explained after the time had lapsed do not count in explaining the reason for the delay; (e) the intended appeal has no prospects of success; (f) the applicant's application is incompetent and omnibus.

5. In support of the application, the applicant's counsel filed submissions dated 13<sup>th</sup> January 2026 basically urging that, this Court enjoys a wide and unfettered discretion under Rule 4 to extend time upon sufficient cause being shown. Counsel argued that the Court considers length of the delay, explanation for the delay, arguability of the intended appeal

and prejudice to the other

party. In support of the foregoing counsel relied on **Marwa vs. Chacha Civil Appeal (Application) 103 of 2020 (2025] KECA 2151 (KLR); Fahim Yasin Tvaha vs. Timamy Issa Abdalla & 2 Others Civil Application No. Nai. 6 of 2015 (2015] eKLR.**

6. Further, counsel asserted that the delay is measured from the date of knowledge of the judgment which is 2<sup>nd</sup> December 2025, therefore, it is neither inordinate nor wilful. Further, upon learning of the judgment, the applicant immediately instructed new counsel who executed the consent to come on record on 15<sup>th</sup> December 2025, and requested for certified proceedings on 16<sup>th</sup> December 2025. Counsel maintained that the cause of delay was the previous counsel's unavailability due to assumption of political office, hence, it was beyond his control. For this assertion, he relied on **Aviation & Allied Workers Union Kenya & 3 Others vs. Kenya Airways Ltd & 3 Others [2015] eKLR.**
7. Lastly, counsel argued that the intended appeal raises arguable grounds including errors in evaluation of evidence and reversal of the trial Court's findings. **Citing Diplack Kenya Limited vs. William Muthama Kitonyi Civil Application No. NAI 214 of 2017 [2018] eKLR)**, counsel argued that the respondents will suffer no prejudice as the

applicant is willing to furnish security.

8. In their submissions dated 23<sup>rd</sup> February 2026, respondents' counsel while appreciating that extension of time is an exercise of judicial discretion, cited ***Namu vs. Njeru [2023] KECA 695 (KLR)*** in support of the proposition that a plausible explanation for the delay is the key that unlocks the discretion. Counsel took issue with the reasons offered for the delay citing the failure to specifically state the date when they learnt of the delivery of the judgment. Further, the name of the advocate he attempted to call unsuccessfully or the mobile number nor did they disclose when they discovered their advocate had joined politics. The respondents cited ***Rono vs. Rono Misc. Application No E095 of 2025*** in support of the holding that it is the duty of a litigant to follow his case diligently.
9. Lastly, the respondents submitted that the application does not meet the twin principles of arguability and the nugatory aspect and urged this Court to disallow the application.
10. 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.**
11. 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)**). 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.

12. 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.

13. 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.
14. I have looked at the reason provided by the applicant highlighted earlier and the grounds urged in opposition to the application. The judgment sought to be appealed against was delivered on 9<sup>th</sup> October 2025. The applicant claims that he only learnt of its delivery on 2<sup>nd</sup> December 2025 following an informal discussion with the applicant’s advocate who informed him that they had lodged a party-to-party bill of costs against him. However, the main reason offered for this delay is that his advocate went into politics and he was elected a speaker of a County Assembly. According to the applicant could not get his client over the phone, therefore the delay occurred. With this explanation, he urges the Court to be persuaded and exercise its discretion in his favour.
15. In my view, the 31-day delay, though not properly accounted for is not inordinate. I note that the applicant’s memorandum of appeal is ready, signifying the desire to be heard. It also shows there was an effort to file the appeal. In my view, the interests of justice in my view tilt in favour of opening the

doors of justice to

the applicant. Accordingly, I allow the plea to file a notice of appeal and the memorandum of appeal out of time. I direct that the notice of appeal and the memorandum of appeal be filed and served within 7 days from today. I make no order as to costs.

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

**J. MATIVO**

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

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

*Signed.*

**DEPUTY REGISTRAR.**

