



**Maritim v Koech & 2 others (Civil Application E130 of 2025)
[2026] KECA 566 (KLR) (16 March 2026) (Ruling)**

Neutral citation: [2026] KECA 566 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E130 OF 2025
JM MATIVO, JA
MARCH 16, 2026**

BETWEEN

JOSEPH KIPLANGAT MARITIM APPLICANT

AND

ZEDDY CHEPKEMOI KOECH & 2 OTHERS RESPONDENT

*(Being an application for stay of execution from the judgment of
the Environment and Land Court of Kenya at Kilgoris (M. N.
Mwanyale, J.) dated 23rd October 2025 in ELCLA No. E019 of 2025)*

RULING

1. Joseph Kiplangat Maritim (the applicant) vide his application dated 1st December 2025 prays for an order of this Court to enlarge time for him to lodge and serve the memorandum of appeal dated 27th November 2025 against the judgment of Hon. M.N. Mwanyale issued on 23rd October 2025 in Kilgoris ELC No. E019 of 2025. He also prays for the costs of this application to be provided for.
2. The grounds in support of the application are that the trial Court dismissed the applicant's case on 23rd October 2025, that the advocates then on record for the applicant did not notify the applicant about the Court decision, the applicant learnt about the decision when he visited the advocates offices, dissatisfied by the said judgment, the applicant intends to appeal to this Court, the applicant has prepared a memorandum of appeal which raises arguable grounds. The orders if granted will not prejudice the respondent and that there has not been a delay in filing this application.
3. In opposition to the application, the respondents filed the replying affidavit sworn by the 2nd respondent dated 8th December 2025. The salient points raised are: (a) the judgment was delivered on 23rd October 2025 therefore, the notice of appeal ought to have been filed by 7th November 2025; (b) the applicant has not disclosed the exact date he learnt about the delivery of the judgment; (c) it took well over one month for the applicant to learn about the judgment, (d) no reasons have been provided



which may have caused the applicant not to contact his advocates, (e) the applicant has a duty to pursue his case diligently, and (f) granting the prayers will be prejudicial to the respondent.

4. In support of the application, the applicant cited this Court's decision in *Leo Sila Mutiso vs. Hellen Wangari Mwangi* [1999] 2 EA 231 in support of the proposition that whether or not to grant extension of time is an exercise of this Court's discretion and this Court considers the reasons for delay, length of the delay and whether the appeal has chances of success. Also, the applicant cited *Muringa Company Ltd vs. Archdiocese of Nairobi Registered Trustees*, Civil Application No. 190 of 2019 in support of the holding that the Court has to balance the interests of the party who has a decree and the party who has a constitutionally underpinned right of appeal and the need to protect the right to fully agitate his appeal and to ensure timely resolution of disputes. The applicant entreated that the period of delay is only 312 days, therefore it is not inordinate.
5. In opposition to the application, the respondents in their submissions argued that whereas 30 days is not inordinate, as was held in *Kenya National Highways Authority vs. Joseph Ndolo Mutua* [2020] eKLR, there is no minimum or maximum period of delay and any period must be satisfactorily explained. As for the parameters of delay, the respondent relied on *Fakir Mohamed vs. Joseph Mugambi & 2 Others* [2005] eKLR which laid down the considerations to be considered by the Court in applications of this nature which include the period of the delay, reasons for the delay, chances of success of the appeal, the effect of the delay and the need to adhere to timelines only to mention but some. The respondent also argued that a litigant has a duty to pursue his advocates as was stated in *Bi-Mach Engineers Ltd vs. James Kahoro Mwangi* [2011] eKLR and *Rajesh Rughani vs. Fifty Investments Ltd & Ano.* [2005] eKLR.
6. The application is brought under Rules 4 of the Court of Appeal Rules 2022 which 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."
7. 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.
8. 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.

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" to 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.
11. I have looked at the reason provided by the applicant highlighted earlier and the grounds urged in opposition to the application. In my view, the 31 days 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. In my view, the interests of justice 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 orders as to costs.

DATED AND DELIVERED AT NAKURU THIS 16TH 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.

