

**IN THE COURT OF APPEAL  
AT NAKURU**

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

**CIVIL APPLICATION NO. NAK E117 OF**

**2025 BETWEEN**

**JOHN KAMWAGA MUNYARARE.....APPLICANT**

**AND**

**SAMUEL MUCHAI MAINA.....RESPONDENT**

*(Being an application for extension of time to file a notice of appeal and a record of appeal from the judgment and ruling of the High Court of Kenya at Nyahururu (C. Kariuki, J.) dated 11<sup>th</sup> April 2024*

*in*

**HCA No. E021 of 2024**  
*formerly Nyandarua HCCA 089 of 2023).*

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**RULING**

1. John Kamwaga Munyarare (the applicant) vide his application dated 5<sup>th</sup> November 2025 prays for an order that the time limited for him to file and serve the notice of appeal, memorandum of appeal and record of appeal be enlarged and/or extended to allow the filing of the same within such time as this Honourable Court may deem fit. The applicant also prays for costs of the application to be provided for. The germane ground provided for the delay is that the applicant opted to apply for review of the judgment of the first Appellate Court delivered on 11<sup>th</sup> April 2024. However, his

application for review was declined by a ruling dated 21<sup>st</sup> October 2025. The applicant claims that having opted for review, he was caught up by time to appeal against the judgment dated 11<sup>th</sup> April 2024. The other grounds are that he was denied the chance to be heard because his submissions were not considered, that the trial Court's judgment is unenforceable because it does not state which defendant is liable. Further, the 2<sup>nd</sup> defendant was omitted in the appeal against the trial Court's decision.

2. In opposition to the application, the applicant filed a replying affidavit dated 17<sup>th</sup> March 2025 urging that: (a) the application is a waste of Court's time; (b) the applicant was granted leave to file his documents in Nyandarua HCCA No. E089 of 2023 but failed to do so; (c) as a result of his failure, the Court proceeded to deliver its decision; (d) the applicant was granted two adjournments to file his documents but he failed to do so; (e) the applicant was represented by an advocate at all material times, therefore, he cannot turn around and blame the Court; (f) the applicant opted to move a court of concurrent jurisdiction to overturn the judgment; (g) even though extension of time is a matter within the Court's discretion, the Court ought to consider the peculiar circumstances of the case.
3. The applicant filed a supplementary affidavit dated 20<sup>th</sup>

November 2025 maintaining that he filed written submissions dated 27<sup>th</sup>

February 2024 in Nyandarua HCCA No E089 of 2023 and the judgment was delivered on 11<sup>th</sup> November 2024 clearly indicating no submissions were filed before the delivery of the judgment.

4. In support of the application, the applicant's counsel submitted that as was held in **Seventh Day Adventist Church of East Africa Ltd & Ano. vs M/s Maosa Construction Company Civil Application No. NAI 349 of 2005**, this Court has wide discretion to extend time under Rule 4 of the Court of Appeal Rules, 2022 and beseeched this Court to be persuaded by the grounds provided in support of the application.
5. As at the time of writing this ruling on 16<sup>th</sup> March 2026 at 9.05 a.m, the respondent had not filed his submissions.
6. The application is brought under Rule 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."* The Supreme Court in **Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and**



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)). 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.

8. 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.
9. 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 non-existent), 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.

10. I have looked at the reasons provided by the applicant highlighted earlier. The judgment of the first Appellate Court was delivered on 11<sup>th</sup> April 2024. The applicant who was ably represented by an advocate opted to apply for review of the judgment as opposed to filing an appeal. It is not within my remit in this ruling to determine whether the applicant made the right choice in preferring to review the judgment. Relevant to the issue before me is the fact that, the applicant now seeks leave to appeal against the judgment dated 11<sup>th</sup> April 2024 and the ruling dismissing his application for review dated 21<sup>st</sup> October 2025. Again, it is not within my remit at this point to address the issue whether a litigant can exercise both the right to appeal and review the same judgment. What is relevant is that in determining extension of time, in addition to a reasonable explanation for the delay, the Court can also consider whether the appeal has prospects of success.

11. As for the delay, the High Court judgment was delivered on 11<sup>th</sup>

April 2024. The applicant consciously elected to apply for review.

He cannot come back and say, since his application for review was dismissed, he should be granted leave to appeal. The discretion under Rule 4 is wide, but it is not elastic to the extent it can cover all situations. Each case depends on its peculiar circumstances. A party is the master of his/her own case. The applicant exercised party freedom in electing to apply for review as opposed to appealing against the judgment. Court decisions in literary all jurisdictions emphasize that a litigant has the autonomy to decide how to present his/her case, whom to sue, and how to conduct his/her litigation strategy. This freedom is rooted in principles of natural justice, the right to a fair hearing, and the adversarial system, which requires parties—not the Court—to frame the dispute. Courts recognize that a litigant has the right to manage his/her case, including the right to withdraw a suit, subject to the Court's leave. The Court's primary duty is to facilitate the party in putting their case forward upon the merits of the matter.

12. The ruling dismissing the review application is dated on 21<sup>st</sup> October 2025. There is no letter to the Court asking for proceedings at least to signify intention to appeal. An applicant seeking extension of time must give a full, reasonable, and acceptable explanation covering the entire period of delay.

Even a one-day delay must be explained. A reasonable and acceptable explanation for a delay, particularly when coupled with good

prospects of success, triggers the Court's discretion to grant condonation and extend time limits in the interest of justice. The courts look at the "*interest of justice*" as the standard for condonation, not just whether the explanation (if any) is good. The decision to appeal appears to be an afterthought.

**13.** The reason the applicant did not appeal against the judgment is because he opted to review the judgment. I have already explained that he exercised party autonomy. I say no more. Lastly, the Court must assess whether granting the extension unfairly prejudices the other party. In this case, the trial Court's judgment was delivered on 27<sup>th</sup> March 2023. Litigation must come to a close. Accordingly, I am **NOT** inclined to exercise my discretion in the applicant's favour. The applicant's application dated 5<sup>th</sup> November 2025 is hereby dismissed with costs to the respondent. **Dated and delivered at Nakuru this 16<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.**