



**Ngetich v Cheptoo & 2 others (Civil Application E206 of 2025)
[2026] KECA 569 (KLR) (16 March 2026) (Ruling)**

Neutral citation: [2026] KECA 569 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E206 OF 2025
JM MATIVO, JA
MARCH 16, 2026**

BETWEEN

REUBEN KIPKORIR NGETICH APPLICANT

AND

PAUL BARKEBO CHEPTOO & 2 OTHERS RESPONDENT

*(Being an application for stay of execution from the judgment of
the Environment and Land Court of Kenya at Kabarnet (L. N.
Waithaka, J.) dated 30th September 2025 in ELCA No. E003 of 2025)*

RULING

1. Paul Barkebo Cheptoo (the applicant) vide his omnibus application dated 27th November 2025 prays for: (a) leave to file and serve a valid notice of appeal out of time against the Judgment delivered on 30th September 2025 in Kabarnet ELC Appeal No. E003 of 2025, and (b) the notice of appeal filed by the applicant's advocates, M/s Yator & Associates Advocates to be deemed as duly filed and properly on record. The other prayers sought fall outside the jurisdiction of a single judge.
2. The key grounds urged in support of the plea for extension of time are:
 - (a) the applicant's previous advocates filed a notice of appeal within the statutory 14 days, but the same was defective and unsigned hence invalid;
 - (b) upon being instructed, the applicant's current advocates, Ms Yator & Associates Advocates, promptly filed a notice of change of advocates and thereafter lodged a valid notice of appeal, albeit after the lapse of the fourteen (14) days provided under Rule 77 (2) of the Court of Appeal Rules 2022;
 - (c) the delay in filing a proper notice of appeal was inadvertent and excusable occasioned solely by the former counsel's oversight and not due to any fault or indolence by the applicant,



- (d) the applicant being dissatisfied with the judgment intends to appeal to this Honourable Court and has filed a memorandum of appeal raising arguable issues of law which merit full consideration by this Honourable Court,
 - (e) the intended appeal raises weighty and arguable issues of law and fact including the legality of the Land Registrar's powers under Section 79 of the *Land Registration Act* 2012, the propriety of rectification orders issued by the Land Registrar, and the evaluation of evidence by the learned Judge.
3. The 1st respondent filed grounds of opposition dated 6th December 2025 essentially describing the application as incompetent, it has been filed by a stranger and no valid reason has been provided for the failure to file notice of appeal nor has sufficient reasons been provided. Lastly, the invalid notice of appeal cannot be cured retrospectively.
 4. In a supplementary affidavit dated 11th December 2025, the applicant urged that notice of appeal was incompetent but upon discovery of the omission, the current advocates filed a proper notice of appeal.
 5. In his submissions supported by the authorities cited which I have read, the applicant's counsel maintained that the application meets the threshold and tests for the grant of the injunction sought and that the intended appeal will be rendered nugatory if the application is refused.
 6. The crux of the 1st respondent's opposition as I gather it from his submissions and the authorities cited is that the application does not meet the threshold and that the 1st respondent will be prejudiced if the prayers sought are granted.
 7. The 2nd and 3rd respondents did not file any papers.
 8. 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 Boundaries Commission & 7 Others* [2014] eKLR summed up the applicable considerations as follows:
 - (a) 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;
 - (b) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court;
 - (ii) 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.



9. 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. 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.
10. 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. 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. The impugned judgment was delivered on 30th September 2025. A notice of appeal was filed within time but it was unsigned, hence the defect. The instant application was filed on 27th November 2025. In my view, the omission to sign the notice of appeal, is an acceptable explanation. The delay in filing the present application is not inordinate. Accordingly, I allow this application and direct the applicant to file his notice of appeal within 7 days from today and thereafter file his appeal within 30 days.

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.

