

**IN THE COURT OF
APPEAL AT NAKURU**

(CORAM: MATIVO, JA (IN CHAMBERS))

CIVIL APPLICATION NO. NAK E123 OF

2025 BETWEEN

VIRGINIA W. NJOROGE.....APPLICANT

AND

CHARLES KAMAU KARANJA & 2 OTHERS.....RESPONDENTS

(Being an application for leave to lodge and serve notice of appeal from the judgment of the Environment and Land Court (A. Obwayo, J.) dated 10th July 2025

in

***ELC Case No. 583 of
2013).***

RULING

1. Virginia W. Njoroge (Sued as the legal representative of the estate of Ayub Njoroge Wainaina (deceased) in her application dated 9th October 2025 prays for extension of time to lodge and serve notice of appeal and record of appeal in an intended appeal from the judgment of the Environment and Land Court sitting in Nakuru (*Ombwayo, J.*) delivered on 10th July 2025, ELC Case No. 583 of 2013, - Charles Kamau Karanja vs The District Land Surveyor Nakuru & 2 Others. The applicant also prays for the costs of this application to be provided for.

2. The key grounds urged by the applicant are that she was not aware that the judgment had been delivered on 10th July 2025; that she risks suffering irreparable loss in the event the leave sought is declined; her advocate informed her there was a delay in uploading the application; her intended appeal is arguable and no prejudice will be suffered by the respondent in the event the appeal is granted.
3. The parties were notified of the hearing date by a hearing notice dated 24th February 2026. However, the respondents have not filed a reply to the application or submissions.
4. 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.”* 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.**
5. 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.

6. 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.
7. 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.

8. I have looked at the reasons provided by the applicant highlighted earlier. The judgment of the first appellate court was delivered on 10th July 2025. The instant application was filed on 9th October 2025. Even though the applicant has not specifically stated the exact date she learnt about the judgment, I have considered also the arguability of the intended appeal as I gather from the papers filed and the decision of the trial Court. I am persuaded that this is a proper case for me to exercise my discretion in the applicant's favour. Accordingly, I allow the application and grant the applicant 60 days from today within which she should file her appeal. I make no order as to costs.

Dated and delivered at Nakuru this 17th day of March, 2026.

J. MATIVO

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

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

Signed.

DEPUTY REGISTRAR.