

**IN THE COURT OF
APPEAL AT NAKURU**

(CORAM: MATIVO, JA (IN CHAMBERS))

CIVIL APPLICATION NO. NAK E143 OF

2025 BETWEEN

PANYAKO SOMBESHA.....APPLICANT

AND

ATTORNEY GENERAL & 2 OTHERS.....RESPONDENTS

(Being an application for leave to lodge and serve notice of appeal from the judgment of the Environment and Land Court of Kenya at Narok (M. Kullow, J.) dated 25th July 2025

in

ELC Constitutional Pet. No. 381 of 2017).

RULING

1. Panyako Ole Sombesha (the applicant) in this “*omnibus*” amended application dated 24th December 2025 seeks 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 1A of the application which falls within the jurisdiction of a single judge in which he applicant prays for extension of time to file his memorandum of appeal against the judgment and decree delivered by *Kullow, J.* on 25th July 2025 in Narok ELC Constitutional Petition No. 381 of 2017, Panyako Sombesha vs Land Adjudication and Settlement Officer, Trans Mara/West District & 3 others; Roiko & Ano. (Interested Parties).
3. In support of the application, the applicant states that: (a) at the time the judgment was delivered he was bed ridden and on oxygen since 2013, therefore the sickness curtailed his ability to file the appeal; (b) in addition to medical bills, he needed to raise funds to cater for the legal fees for the appeal; (c) the judgment was

delivered virtually from Nairobi on 24th October 2025 and the file was not physically returned to Narok Court until after 30 days had lapsed; (d) that the intended appeal has merits.

4. The 1st Interested Party filed a replying affidavit dated 26th January 2026 in opposition to the appeal urging that: (a) the applicant has not exercised due diligence in taking the required steps; (b) that the medical documents annexed to the application are not conclusive nor do they cover the entire period, nor was hospitalization continuous; (c) the existence of a power of attorney undermines his claim for sickness; (d) the applicant seeks to delay the enjoyment of the judgment or to frustrate, delay or obstruct the course of justice; (e) he who seeks equity must come with clean hands.
5. In support of the prayer for extension of time, the applicant cited Rule 4 of the Court of Appeal Rules and **Sila Mutiso vs. Rose Hellen Wangari Mwangi [1999] 2 EA 231** in support of the proposition that extension of time is a matter of judicial discretion and that the threshold for granting a stay includes a plausible explanation for the delay. Further, as was held in **Thuita Mwangi vs. Kenya Airways Ltd [2003] eKLR**, the delay must not be

inordinate. Lastly, the applicant maintained that the appeal is arguable.

6. The respondent did not file a reply to the application nor did he file submissions.
7. The interested parties counsel cited the parameters set out by the Supreme Court in **Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 Others [2014] eKLR** in opposition to the application and submitted that the applicant has not demonstrated sufficient cause to merit the orders sought. He maintained that the delay remains unexplained and that the applicant was indolent. Counsel also cited **Mumo Matemu vs. Trusted Society of human Rights Alliance & 5 Others [2013] eKLR** in support of the holding the rules of procedure should not be trivialized.
8. 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.**
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. 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.

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.

11. 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. This Court has in numerous decisions held that condonation is not “*to be heard merely for the asking*”. An applicant must provide a full, genuine, and reasonable explanation for the entire period of the delay. The applicant bears the burden of showing “*good cause*.” The explanation must cover “*every period of the delay*”. Gaps in the timeline where no explanation is provided often lead to the refusal of condonation. A reasonable explanation is a threshold requirement. If the explanation is non-existent or clearly insufficient, the court may refuse condonation without even looking at the “*prospects of success*” on the merits of the appeal. The reason must be one that a “*reasonable person*” in the applicant's position would find excusable.

12. An “*unsatisfactory explanation*” for a delay is one that fails to provide a compelling, comprehensive and reasonable account for the entire period of non-compliance. I have looked at the reason provided by the applicant highlighted earlier and the grounds

urged in opposition to the application. Serious illness (whether of the litigant or their legal representative) is a well-recognized ground for the Court's "*pardon*" for a late filing. While there is no automatic rule that sickness excuses a delay, Courts treat it as a significant factor in determining if "*good cause*" exists. The ultimate test is the interests of justice. Even if an explanation (like illness) is slightly thin, a Court may still grant condonation if the appeal has strong prospects of success and there is no undue prejudice to the other party. The Court must balance all the factors. In **Melane vs. Santam Insurance Co. Ltd 1962 (4) SA 531 (A)**, the Court noted that the degree of lateness, the explanation (e.g., medical emergency), and the prospects of success are interrelated. A serious illness often "*compensates*" for a longer delay that might otherwise be refused.

13. To successfully rely on sickness, the applicant's affidavit must specify the nature of the condition and how it prevented action (e.g., being bedridden or hospitalized). Include medical certificates or hospital records to corroborate the claim. Cover the gap between the onset of illness and the eventual filing to show no additional negligence occurred once health was restored. I am satisfied that the explanation offered in this case is plausible,

therefore, this is a proper case for me to exercise my discretion in favour of the applicant. Accordingly, I grant the applicant extension of time to file his memorandum of appeal against the judgment and decree delivered by *Kullow, J.* on 25th July 2025 in Narok ELC Constitutional Petition No. 381 of 2017, Panyako Sombesha vs Land Adjudication and Settlement Officer, Trans Mara/West District & 3 others; Roiko & Ano. (Interested Parties) within 30 days from the date of this ruling. I make no order as to costs

Dated and delivered at Nakuru this 17th 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.