



REPUBLIC OF KENYA



**Linti & 4 others v Kilongu alias Ipite ole Kiloku & 10 others (Civil Application E022 of 2026) [2026] KECA 742 (KLR) (23 April 2026) (Ruling)**

Neutral citation: [2026] KECA 742 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION E022 OF 2026**

**JM MATIVO, JA**

**APRIL 23, 2026**

**BETWEEN**

**LEKISHON OLE LINTI & 4 OTHERS ..... APPLICANT**

**AND**

**IPITIET OLE KILONGU ALIAS IPITE OLE KILOKU & 10  
OTHERS ..... RESPONDENT**

*(Being an application to be granted leave to file a notice of appeal and memorandum of appeal out of time from the judgment of the Environment and Land of Kenya at Nakuru (A. Ombwayo, J.) dated 16th October 2024 in ELC Case No.39 of 202)*

**RULING**

1. The applicants vide their application dated 2<sup>nd</sup> February 2026 pray for leave to file a notice of appeal and memorandum of appeal out of time against judgement delivered by Honourable Anthony Ombwayo J. on 16<sup>th</sup> October 2024. The applicants also pray for an order that the annexed notice of appeal and memorandum of appeal be deemed as duly filed and served upon payment of the requisite Court fees. Lastly, the applicants pray that the costs of this application be in the intended appeal.
2. The application is premised on the grounds listed on its body and the annexed supporting affidavit sworn by Lekishon Ole Linyi on 2<sup>nd</sup> February 2026. Briefly, the key grounds are: (a) the applicants together with 17 others were declared adverse possessors vide the judgement in HCCC 89 of 1996, and were among the seventeen (17) defendants; (b) their appeal against the said decision being COA No. 64 of 2004 was successful and the 1<sup>st</sup> applicant land parcel number Maela/Ndabibi Block 5/2252 and 3073 was to be transferred from Ngati Farmers and registered as follows: (i) Maela/ndabibi Block 5/2253 in the names Lekishon Ole Linti, Kashau Ole Olokuo, Nakurroh Mamaet and Joseph Ole Lemunti Ledama. (ii) Maela/Ndabibi Block 5/3073 in the names of Lekishon Ole Linti, Nakurroh



Mamaet, Kashau Ole Olokuo, Sponyo Ole Nkuruna, Welson Letouwon Ole Nkamasai and Joseph Ole Lemuni Ledama.

3. Further, the applicants state that a rigorous process established that there were only 601 beneficiaries to the said land who should be issued with titles. However, the 1<sup>st</sup> to the 6<sup>th</sup> respondents filed ELC No. 39 of 2020, seeking revocation/cancellation of the applicants' titles alleging fraud, notwithstanding the foregoing history. In a judgment dated 16<sup>th</sup> October 2024, the Court inter alia ordered the cancellation of the said titles. It was also ordered that title deeds to land parcel Maela/Ndabibi Block 5/2253 and 3073 be issued to the 17 defendants in H.C.C.C 89 of 1996 to hold in trust for themselves and all the beneficiaries.
4. By an application dated 27<sup>th</sup> January 2025, the applicants applied to review the said judgment on grounds that the names of the beneficiaries were not disclosed and out of the 17 members, some were deceased, a fact confirmed by the respondents in their affidavit dated 11<sup>th</sup> December 2025. However, by a ruling delivered on 9<sup>th</sup> May 2025 their application was dismissed on the grounds that there was no new or important matter to be reviewed.
5. Subsequently, the applicants filed an application dated 17<sup>th</sup> November 2025 seeking revocation of the individual titles issued contrary to the judgement of the court delivered on 16<sup>th</sup> October 2024. By a ruling dated 14<sup>th</sup> November 2025, the court allowed the application and ordered the individual titles to be cancelled since they were issued contrary to the judgement of the court. However, by a ruling delivered on 15<sup>th</sup> January 2025, the cancelled titles were reinstated. The applicants are aggrieved by the said ruling and that their intended appeal raises arguable grounds, and that there is a risk of their appeal being rendered nugatory.
6. The application is opposed vide a 62 paragraph replying affidavit dated 12<sup>th</sup> March 2026 sworn by Ipitiet Ole Kilongu on behalf of himself and the other respondents. Briefly, the key highlights are that; (a) the applications have since the delivery of the judgment been filing all manner of applications; (b) a litigant cannot appeal and apply for review at the same time; (c) the High Court in HCCC No. 89 of 1996 declared that the respondents had properly acquired the suit land which decision was upheld by this Court in Nakuru Civil Appeal No. 64 of 2004. From the said judgment, the two parcels of land were to be registered in the names of the 17 defendants in HCCC No. 89 of 1996 to hold for themselves and in trust for the other beneficiaries but instead of registering the land as per the court order, the applicants fraudulently registered them as particularized at paragraph 16 of his affidavit. The fraudulent registration was successfully challenged in Nakuru ELC No. 39 of 2020 in which the court ordered the cancellation of the titles among other orders. Further, the said titles have since been cancelled.
7. In their written submissions, the applicants maintained that this Court has the discretion to extent time under Rule 4 of the Court of Appeal Rules and relied on this Court's decision in *Fakir Mohamed vs. Joseph Mugambi & 2 Others* [2005] eKLR. As for the reasons for the delay, the applicants listed the three applications they filed, namely the application for review dated 27<sup>th</sup> January 2025, the application dated 14<sup>th</sup> July 2005 which was allowed on 14<sup>th</sup> November 2025 and a further application for review by the respondents which was allowed on 15<sup>th</sup> January 2026. According to the applicant's the case remained active and argued that pursuing a review application constitutes an excusable reason for delay. Further, the delay was not deliberate or intended to obstruct justice. Lastly, it is the applicants' case that their intended appeal is arguable and that the interests of justice favour granting the extension sought.
8. In the submissions dated 7<sup>th</sup> February 2026, the respondent maintained that the application is not properly before the Court, that it is not merited and urged the Court to dismiss it with costs.



9. Even though the applicant did not specifically invoke Rule 4 of the Court of Appeal Rules, 2022, the prayers sought fall within the ambit of the said rule 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.”
10. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR summed up the applicable considerations in an application for extension of time under Rule 4 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.
11. A useful starting point is to underscore that 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)). It is important to emphasize 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.
12. 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.
13. In my view, a critical 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 nonexistent), 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.

14. I have looked at the reasons provided by the applicants highlighted earlier. The judgment by the trial court was delivered on 24<sup>th</sup> October 2024. The applicants in their own wisdom opted to apply for review in the applications highlighted earlier. The question whether a party can pursue both a review against a judgment and an appeal is not for me to determine at this stage since it may be a live question in the appeal if filed. It is not within my remit in this ruling to determine whether the applicants made the right choice in preferring to review the judgment or even opting to file several applications. Also, in determining this application, I restrain myself from commending on the fact that this same dispute was heard and determined by the Court of Appeal in Civil Appeal No. 64 of 2004 because it may be a live question should the appeal be filed. 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.
15. 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.
16. The judgement sought to be appealed against was delivered on 16<sup>th</sup> October 2024. A notice of appeal dated 23<sup>rd</sup> October 2024 is among the documents on the record. There is no letter bespeaking the proceedings. To use the applicant's own words, subsequently, the applicants opted to pursue review applications as highlighted earlier. I have perused the entire record. There is no notice of appeal against the ruling sought to be appealed against. 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.
17. The reason the applicants did not appeal against the judgment is because they opted to review the judgment. I have already explained that they exercised party autonomy. I say no more. Lastly, the Court must assess whether granting the extension unfairly prejudices the other party. In this case, it has been said that the titles were cancelled, meaning execution is complete. Litigation must come to a close. Accordingly, I am not inclined to exercise my discretion in the applicants' favour. The applicants' application dated 2<sup>nd</sup> February 2026 is hereby dismissed with costs to the respondents.

**DATED AND DELIVERED AT NAKURU THIS 23<sup>RD</sup> DAY OF APRIL 2026.**

**J. MATIVO**

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**JUDGE OF APPEAL**

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

Signed.

**DEPUTY REGISTRAR**

