

**IN THE COURT OF
APPEAL AT NAKURU**

CORAM: MATIVO, JA. (IN CHAMBERS)

CIVIL APPLICATION NO. NAK E009 OF

2026

BETWEEN

GEORGE GITAU MBUGUA.....APPLICANT

AND

KABECHO HOUSING COMPANY LIMITED.....1ST RESPONDENT

S.L.M.H. MUHIA t/a S.L.M.H

MUHIA & CO. ADVOCATES.....2ND

RESPONDENT

DAVID NJAU WAKIO t/a

MILANO COMMERCIAL AGENCIES.....3RD RESPONDENT

*(Being an application from judgment and decree of the
Environment and Land of Kenya at Nakuru (M. A. Odeny,
J.) dated 13th August 2025*

in

ELCA No.6 of 2018

RULING

1. George Gitau Mbugua (the applicant) vide his application dated 17th November 2025 prays for extension of time to file and serve a notice of appeal against the Judgment of the Honourable Lady Justice M.A. Odeny delivered on 13th August 2025 in ELC Appeal No. 6 of 2018. The applicant also prays for an order that the notice of appeal dated and filed on 10th September 2025 be deemed as duly filed and served within

time. Lastly, the applicant prays for

the costs of this application do abide the result of the intended appeal.

2. The grounds in support of the application are that the judgment sought to be appealed from was delivered on 13th August 2025 by Lady Justice M.A. Odeny. However, the applicant was never served with any notice of the judgment delivery date, therefore, he did not attend court when the judgment was delivered. The applicant states that prior to the said date, the matter had been mentioned but no date for the delivery of the judgment was fixed or communicated by the court and neither was the case listed in the cause list of 24th July 2025 nor was a notice of its delivery issued or served. As a consequence, the judgement was read in the absence of the intended applicant's advocates' on record during the court vacation on 13th August 2025. It is also the applicant's case that there was no cause list on the said date when the court was in vacation. The applicant's advocates only became aware of the judgment when they saw it on the CTS portal much later. Therefore, the delay in filing the notice of appeal was not deliberate but due to lack of notice nor was the delay inordinate. The applicant maintains that his intended appeal raises arguable issues deserving determination by this Honourable Court. Lastly,

no prejudice will be occasioned to the respondent if the application is allowed.

3. As at the time of writing this ruling, at 9.07 am today, the respondent had not filed a reply to the application or submissions. Also, the applicant has not filed submissions. Even though under Rule 58 the Court may dismiss an application or adjourn where the party or parties have failed to comply with directions, except where the Court deems it fit to adjourn the hearing, I see no reason to adjourn the hearing. In any event, the directions were taken in the absence of the 2nd and 3rd respondents. However, there are two affidavits of service showing the parties were served via email.

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: (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.

5. It is settled law that a plausible, reasonable and comprehensive explanation for the delay is a crucial, though not the 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)).

Condonation for delay is not a right. A "*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 sloppiness. 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 of the appeal 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 C 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.

7. I have carefully considered the reason provided for the delay. The impugned judgment was delivered without notice to the applicant and during the recess period. In my view, the explanation offered for the delay is highly plausible. Accordingly, I am inclined to exercise my discretion in favour of the applicant. Therefore, I allow the application dated 17th November 2025 and extent time to the applicant to file his notice of appeal within 7 days from the date of this ruling. The costs of this application shall abide the outcome of the appeal.

Dated and delivered at Nakuru this 23rd day of April 2026.

J. MATIVO

.....
JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR