

4. On 26th February 2026, this Court issued orders on the Appellant's earlier application dated 21st November 2025 granting a stay of execution of the judgment delivered by Hon. C.K. Kithinji, J. on 6th November 2025. The stay was conditional upon the Appellant depositing Kshs. 50,000/= as security for due performance of the decree/order within 30 days from the date of the ruling. The sum was to be deposited in a joint interest-earning account in the names of the Advocates for the Appellant and the Respondents.
5. The parties were directed to agree on the bank within seven (7) days, failing which the Deputy Registrar could nominate a reputable commercial bank. In default of compliance, the stay was to automatically lapse, and the Respondents would be at liberty to execute without further reference to the Court.
6. The Appellant now seeks a further fifteen (15) days to comply with Order 2 of the said ruling, an order compelling the Respondents' Advocates Mwazighe & Company Advocates to furnish DTB Bank with the necessary documentation within three (3) days, and in the

alternative, that the Kshs. 50,000/= be deposited directly in Court.

7. The Respondents oppose the Application in its entirety.
8. The Appellant contends that she demonstrated good faith and diligence in attempting to comply with the Court orders. She avers that her advocates initiated contact with the Respondents' advocates within the 30-day period letter dated approximately 18th March 2026 and made inquiries with DTB Bank in early March 2026.
9. The Appellant deposited the sum of Kshs. 50,000/= via M-Pesa on 20th March 2026 well within the 30-day period. The bank responded via email dated 13th April 2026 confirming the possibility of opening the joint account but requiring, inter alia, a copy of the Court ruling. The Appellant attributes the delay to the bank's internal processes and bureaucracy, over which she had no control. She further argues that the Respondents' advocates have unreasonably refused to provide the required documentation.
10. Counsel relies on the principles for extension of time enunciated by the Supreme Court in **Nicholas Kiptoo**

Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR, Raila Odinga & Another v Independent Electoral and Boundaries Commission & 2 Others Petition No. 5 of 2013, Leo Sila Mutiso v Rose Hellen Wangari Mwangi Civil Application No. NAI 255 of 1997, and Philip Chemowolo & Another v Augustine Kubede [1982-88] KAR 103 blunders should not deny a party a hearing on the merits.

11. The Appellant prays for the orders sought, with costs in the cause.
12. The Respondents oppose the Application, arguing that the Appellant failed to demonstrate sufficient reason for the delay. They contend that the Appellant contacted them approximately 18 days after the ruling breaching the 7-day period for agreeing on the bank, provided no proof of prior engagement with DTB Bank, and only filed the Application after the 30-day period had lapsed.
13. The Respondents accuse the Appellant of indolence, unclean hands, and using the Application as a delaying tactic to frustrate execution. They emphasise that Court

orders must be obeyed strictly and cite **Order 42 Rule 14(3) of the Civil Procedure Rules, Kamau (Acting as personal representative of Francis Thuo Kamau t/a Segero Club & Bar) v Odhiambo & 2 Others [2023] KEHC 24661 (KLR)**, and the principles in **Aviation & Allied Workers Union of Kenya v Kenya Airways Limited & 3 Others [2015] eKLR** and **Edith Gichungu Koine v Stephen Njagi Thoithi [2014] eKLR**. They also reference the Court of Appeal decision in **Hon. Jude Kang'ethe Njomo v Hon. John Machua Waithaka & 2 Others [2023] KE CA 753 (KLR)** on security for costs

14. The Respondents pray that the Application be dismissed with costs.

15. The following issues arise for determination:

- i. **Whether the Application is properly before the Court and merited (i.e., whether sufficient cause has been shown for extension of time and/or the alternative relief).**

ii. Whether the Court should compel the Respondents' advocates to furnish documentation to DTB Bank.

iii. Who should bear the costs of the Application.

16. Extension of time is a discretionary equitable remedy and not a right. The Court must consider the principles set out in **Nicholas Kiptoo Arap Korir Salat (supra)** and related authorities: length of delay, reason for the delay, prejudice to the Respondents, whether the Application was brought without undue delay, and the need to do substantive justice as per **Article 159(2)(d) of the Constitution and the overriding objective under Section 1B of the Civil Procedure Act**).

17. The delay is relatively short the 30-day period expired around 28th March 2026; the Application was filed on 15th April 2026. The Appellant has provided a plausible explanation: proactive steps were taken M-Pesa deposit on 20th March 2026 and bank inquiry in early March 2026, as confirmed by the DTB email of 13th April 2026 annexed in the supporting affidavit. The bank's requirement for a

copy of the ruling and other documentation is a third-party procedural step beyond the Appellant's direct control.

18. The Appellant cannot be penalised for the bank's response time.

19. While the Respondents correctly point out that contact with them was made after the 7-day period for agreeing on the bank, the evidence shows substantial compliance efforts by the Appellant funds mobilised and deposited within time, record of appeal filed within time. This is not a case of outright indolence or wilful disobedience. The "unclean hands" doctrine must be applied judiciously; minor procedural lapses should not defeat substantive justice, especially where, as in **Philip Chemowolo (supra)**, the blunder is not intentional or fraudulent.

20. No prejudice to the Respondents has been demonstrated if a short extension is granted. The security sum is already mobilised and ready. The appeal remains pending, and the Respondents' decree is protected by the security. The oxygen principle and Article 159(2)(d) of the Constitution and the overriding objective favour granting

the indulgence to enable the appeal to be heard on its merits rather than on technicalities.

21. The Court therefore finds that the Application is merited. Sufficient cause has been shown for a short extension of time.

22. The primary relief extension and compulsion of documentation is preferred to promote the joint account as originally ordered. Both parties' advocates are officers of the Court and must cooperate to give effect to Court orders. The DTB email confirms that the account can be opened once the required documents including the ruling are furnished. The alternative prayer for deposit in Court is a viable fallback but is not necessary if cooperation is ordered.

23. The Court finds that the Respondents' advocates shall be directed to furnish the necessary documentation to DTB Bank within three (3) days of this ruling.

24. In respect to Costs of the application, the same are at the discretion of the Court pursuant to Section 27 of the Civil Procedure Act. Although the Appellant has succeeded, this is an interlocutory application arising from

a conditional order. In the interests of justice and to avoid further acrimony between the parties, costs shall be in the cause.

25. In the end, the application dated **15th April 2026** is allowed in the following terms:

- 1) The time for compliance with Order 2 of the ruling dated 26th February 2026 is hereby extended by a further fifteen (15) days from the date of this ruling.**
- 2) The firm of Mwazighe & Company Advocates (Respondents' advocates) is directed to furnish DTB Bank with all relevant documentation necessary for the creation of the joint interest-earning account within three (3) days of the date of this ruling. Both firms of advocates shall cooperate fully and expeditiously to open the said account.**
- 3) In the event of any further difficulty in opening the joint account, the Appellant may deposit the sum of Kshs. 50,000/= directly into Court**

as security, such deposit to be made within the extended period.

4) *Costs of this application shall be in the cause.*

It is so ordered.

Dated, Signed and Delivered Virtually at Voi this 30th day of April, 2026.

**E. K. WABWOTO
JUDGE**

In the presence of: -

Mr. Motuka for the Appellant.

Mr. Mwakio h/b for Mr. Mwazighe for the Respondents.

Court Assistant: Mary Ngoira.