

**IN THE COURT OF
APPEAL AT NAKURU**

**(CORAM: HASSAN, J.A (IN
CHAMBERS)) CIVIL APPLICATION**

NO. E047 OF 2026 BETWEEN

KENYA WILDLIFE SERVICE.....APPLICANT

AND

SANKAINE OLE KORianta.....1ST

RESPONDENT THE CHIEF LAND REGISTRAR 2ND

RESPONDENT

HON. ATTORNEY GENERAL.....3RD

RESPONDENT

(An application for extension of time to file and serve the notice of appeal and record of appeal out of time in the intended appeal from the ruling of the High Court at Narok (Charles Kariuki, J.) dated 29th January, 2026

in

Judicial Review No. E003 of 2025.)

RULING

1. Before me is a Notice of Motion dated **23rd March 2026**, brought under Section 1A, 3A, 63e and 79g of the Civil Procedure Act and, Rule 41 (b) of the Court of Appeal Rules substantively seeking an order granting leave to the applicants to file the notice and record of appeal out of time in an intended appeal against the judgment of the High Court at Narok (Charles Kariuki, J.) dated 29th January, 2026 in Judicial Review No. E003 of 2025.

2. The grounds in support of the application are borne on the face thereof and in the affidavit in support sworn by **Joyce Thirikwa**, the applicant's Legal Officer, on 23rd March 2026.
3. The application is opposed by the 1st respondent by way of a replying affidavit sworn by the 1st respondent on 27th March 2026. The applicant responded to the replying affidavit vide a supplementary affidavit sworn on 30th March 2026. The application was canvassed by way of written submissions. The applicant's submissions are dated 30th March 2026.
4. In summary, the applicant's averments and submissions are that it was neither served with a ruling notice nor notified of the date on which the ruling would be delivered. The applicant's counsel avers that she became aware of the ruling through the case tracking system after the matter had been scheduled for the respondent's garnishee proceedings application.
5. The applicant contends that the delay in filing the appeal is not inordinate and has been sufficiently explained. The applicant further contends that the appeal is arguable and has high chances of success.

6. The 1st respondent on his part avers that the ruling date was issued in the presence of both counsels, but on the date of delivery, the applicant's counsel did not turn up.
7. The 1st respondent further avers that there is no valid notice of appeal filed at the high court, the same having been filed without leave, and further that no memorandum of appeal has been annexed to the application to enable the court to decipher whether the appeal has high chances of success or not.
8. The applicant annexed its memorandum of appeal in the supplementary affidavit to demonstrate that the appeal has high chances of success.
9. I have considered the application, grounds in support thereof, the submissions, as well as the law. Even though the application has not been brought under **Rule 4** of the **Court of Appeal Rules**, to me it simply appears to be an application under Rule 4.
10. **Rule 4** of the **Court of Appeal Rules** does not provide for factors the court ought to consider in an application for extension of time, but courts have devised appropriate

principles to be applied in achieving a 'just' decision in
the

circumstances of each case. The case of Leo **Sila Mutiso v Rose**

Hellen Wangari Mwangi [1999], which is the *locus classicus*,

laid down the parameters as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.” [Emphasis supplied.]

11. The Supreme Court has recently set out guiding principles for consideration by courts in an application for extension of time in **Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 others**, SC Application No.

16 of 2014; [2014] eKLR. These principles are:-

- “ i) Extension of time is not a 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**
- v) Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”**

12. These principles shall guide my determination herein. As regards the length of delay, in **Sentrim Kenya Limited v CFC Stanbic Bank Limited** [2021] KECA 648 (KLR) this

Court stated that

there is no maximum or minimum period of delay set out under

the law. However, the reason or reasons for the delay must be reasonable and plausible. In **Andrew Kiplagat**

Chemaringo v Paul Kipkorir Kibet [2018] eKLR, this

Court stated:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favorably exercisable.”

13. In the instant case and as regards the length of the delay, the impugned ruling was delivered on 29th January 2026. The

instant application is dated 23rd March 2026. The period is therefore about 3 months. The delay is not inordinate.

14. The applicant has explained that it was not aware that the ruling in the matter at the High Court had been delivered. The applicant's counsel in her affidavit has explained that the matter had been adjourned when it came up for ruling, and thereafter, the applicant was not informed of the date of the ruling. That counsel only became aware of the judgment through the case tracking system. She has annexed a copy of the case tracking system records. I find the explanation offered by the applicant reasonable and plausible. The 1st respondent confirmed in his replying affidavit that indeed counsel for the applicant was not present when the ruling was delivered.
15. As to the arguability or otherwise of the intended appeal, it would not be in my place to determine the same sitting as a Single Judge, and I will therefore not delve further into this issue.
16. Finally, on prejudice, I find that the respondents shall not suffer any prejudice should the orders sought be granted.

17. The totality of my findings, therefore, is that the applicant has demonstrated and satisfied the existence of the principles for

consideration in the exercise of my unfettered discretion pursuant to Rule 4 of this Court to extend time within which to file the intended appeal.

18. Accordingly, the applicant's motion dated 23rd March 2026 is merited, and the same is hereby allowed. The applicant is to file and serve the memorandum and record of appeal within 30 days from the date of this ruling. Costs of the application to abide by the outcome of the appeal.

Dated and delivered at Nakuru this 8th day of May, 2026.

AHMED ISSACK

.....
JUDGE OF APPEAL

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

DEPUTY REGISTRAR