

**IN THE COURT OF
APPEAL AT NAKURU
(CORAM: HASSAN, J.A (IN
CHAMBERS)) CIVIL APPLICATION
NO. E045 OF 2026 BETWEEN**

**MARY WANJIKU NJIIRI..... 1ST APPLICANT
DAVID GIKONYO NJIIRI..... 2ND APPLICANT**
*(Suing as the legal representatives/ administrators of the estate of
the late **WILSON NJIIRI GIKONYO- deceased**)*

AND

**TABITHA WAIRIMU..... 1ST
RESPONDENT**

*(Sued as the legal representative/ administrator of the estate of
the late **GABRIEL KARANJA KIRIKA- deceased**)*

**PAUL GIKONYO KINYUA.....2ND
RESPONDENT**

SAMUEL MURAGURI.....3RD RESPONDENT

*(Being an application for leave/extension of time to file an
application from the ruling of the High Court of Kenya at
Nakuru (Joel Ngugi, J.)Dated 25th November 2021*

in

**ELC Case No. 102 of 2018
Formerly Civil Appeal No. 569 of
1998)**

****** RULING**

1. Before me is a Notice of Motion dated **26th January 2026**, brought under Sections 3A and 3B of the Appellate Jurisdiction Act, Rules 2, 4, 85 (1) (2), 86 of the Court of Appeal Rules and all other enabling provisions of the law

substantively seeking an order for extension of time/ leave
to enable the applicants file

an application for the notice of appeal dated 7th December 2021 to be struck out.

2. The grounds in support of the application are borne on the face thereof and in the affidavit in support sworn by the applicants on 26th January 2026.
3. In summary, the applicants' averments and submissions are that the respondents herein lodged a notice of appeal dated 7th December 2021. That the 1st, 2nd, and 3rd respondents have taken no step through their counsel for the last 4 years since lodging the notice of appeal. The 60-day deadline lapsed on 10th February 2022.
4. That the respondents have not taken any step to obtain the certified proceedings to enable them to lodge the appeal.
5. That the notice of appeal being defective, to which no appeal lies, the applicants ought to be granted leave to file an application to strike out the appeal.
6. I have considered the application, grounds in support thereof, the submissions, as well as the law. **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.

7. The Supreme Court has, in **Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 others**, SC Application No. 16 of 2014; [2014] eKLR has set out guiding principles which courts ought to consider when determining applications for extension of time. 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-by-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.”***

8. The principles shall be my guide in making my determination herein.
9. 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.”

10. In the instant case, and as regards the length of the delay. The applicants ought to have filed the application to strike out the appeal for failure to file the record of appeal within 30 days from 30th February 2022. Rule 84 of this Court’s Rules

provides as follows:“ A person affected by an appeal may at any time, either before or after the institution of the appeal, apply to the Court to

strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time. Provided that an application to strike out a notice of appeal or an appeal shall not be brought after the expiry of thirty days from the date of service of the notice of appeal or record of appeal, as the case may be. In this case, the delay is more than 4 years and, in all standards, inordinate.

11. The applicants have not explained why it has taken them more than 4 years to move the court. However, in consideration of Section 3A and 3b of the Appellate Jurisdiction Act, it is in the interest of justice that leave be granted to the applicants to make the application to strike out the appeal. The respondents have been in deep slumber and are clearly not interested in pursuing the appeal. They did not even respond to the instant application.
12. Finally, on prejudice, it is my considered view that the respondents herein have lost interest in the matter and shall not suffer any prejudice should the orders sought be granted.

13. The totality of my findings, therefore, is that I am inclined to exercise my unfettered discretion pursuant to Rule 4 of this

Court to extend time within which to file the intended application to strike out the appeal.

14. Accordingly, the applicants' motion dated 26th January 2026 is merited, and the same is allowed in terms of prayer 3. The applicants are to file and serve the application to strike out the notice of appeal within 14 days from the date of this ruling. Costs shall abide by the outcome of the intended application.

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