



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ISIOLO**

**MISCELLANEOUS CIVIL APPLICATION NO. E031 OF  
2025**

**PETER GACHIE GITIMU & KELVIN GITIMU (Suing as  
the legal representatives of the Estate of the late  
LUCY WANGUI**

**GACHIE) .....  
.....APPLICANTS**

**VERSUS**

**ESTHER MUTHONI  
GITUMBU .....DEFENDANT**

**RULING**

1. The Applicant’s Notice of Motion dated 22/10/2025, seeks for enlargement of time to file an Appeal against the Judgment of the trial Court delivered on 12<sup>th</sup> September 2025. The Application is supported by the grounds appearing on the face of the Application as well as the Affidavit of the Applicant, sworn on the same date. There is also a further Affidavit by the Applicants sworn on 18<sup>th</sup> December, 2025.
2. The Applicants have stated that prior to the delivery of judgment the 1<sup>st</sup> Applicant had been recuperating from an injury, sustained as a result of a road accident. It is stated that as a result, he was

not in a position to give instructions to their counsel on time to file the Appeal. The 2<sup>nd</sup> Applicant on the other hand was outside the country when the Judgment was being delivered. A discharge Summary from **Nakuru County Referral Hospital** and a Chinese Visa for period before 22<sup>nd</sup> September, 2025 and 22<sup>nd</sup> December, 2025 are attached to the further affidavit.

### **The Respondent's Case.**

3. The Respondent through her affidavit sworn on 03/12/2025, opposes the Application. She states that Applicants' intention is to purely prolong and delay the finalization of the case; that indeed on the date of delivery of Judgment, her Advocate wrote to the Applicant's Counsel seeking for breakdown of the claim, as well as their Bank particulars to facilitate payment; that the particulars were supplied on 15/09/2023. A copy of the two letters from the said Advocates are attached to the Affidavit.
4. The Respondent further states that the payment of the decretal sum was affected on 22/10/25, by her insurer, **M/S Cannon General Assurance**, and it was only upon settlement of the claim that the present Application was filed. It is stated that it is obvious therefore that the Applicants were only awaiting settlement then seek to file the Appeal. That the delay was not caused by the reasons given. It is further stated that there was no evidence of illness on the part of the 1<sup>st</sup> Applicant, or travel on the part of the 2<sup>nd</sup> Applicant. The Respondent further states that she will suffer injustice, inconvenience and exhaustion. on account of prolonged litigation.

5. The Application proceeded by way of written Submissions which both parties filed. I have read through, and considered the same.

### **Determination**

6. The power to extend time to file an Appeal is a discretionary power and like any discretionary power, it is to be exercised judiciously. The Supreme Court in the case of ***Salat v Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR)*** set the parameters of the exercise of discretion in respect of such Application as follows: -

*a. Extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;*

*b. A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;*

*c. Whether the court ought to exercise the discretion to extend time, was a consideration to be made on a case to case basis;*

*d. Whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;*

*c. Whether there would be any prejudice suffered by the respondents if the extension was granted;*

*d. Whether the application had been brought without undue delay; and;*

e. *Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.*

7. Further, in the case of **Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet [2018] KECA 701 (KLR)** the court of Appeal placed particular emphasis on a plausible explanation for the delay. It held: *“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 favourably exercisable.”*

8. Contrary to the Respondent’s submissions, there is sufficient evidence that the 1<sup>st</sup> Applicant was indeed unwell while the 2<sup>nd</sup> one had travelled at the time or around the time of delivery of judgment by the trial court. The Court observes that both instances of travelling and illness can indeed take away the attention of affected persons from their other undertakings. I am satisfied that the two situations constitute sufficient cause for the delay.

9. The Respondent has argued that, the Applicants real reason for the delay was that they were waiting to receive payment of the decretal sum, before filing an Appeal. There is also evidence that indeed their counsel was aware about the delivery of Judgment and had worked out what he considered to be the amount due to his clients.

10. On the real intentions of the Applicants, that is a matter of speculation, not evidence. On the fact that the Applicants’ Advocate was aware about the judgment, the court takes Judicial Notice as a matter of law that Advocates can only act on instructions of

a client. Thus, the fact that the Applicants 'Advocate did not take steps did not take away the Applicants' right to seek the prayers being sought, in the circumstances appertaining to the present Application. The circumstances were that unlike in the ordinary course of proceedings where an Advocate is deemed to speak for the client at all times, the instructions on whether to Appeal a decision needs the consent of a client.

11. Further accepting payment of the award could not, and cannot act as a bar to the right of Appeal.

12. In the end, the Application is merited. The same is hereby allowed. The Memorandum of Appeal to be filed and served within 14 days from the date of this Ruling.

Dated, Signed and delivered at Isiolo, this 7<sup>th</sup> day of May, 2026

S. Chirchir  
Judge

In the presence of:-  
Roba/Kalelo-Court Assistant  
Mr. Kipkirui for the Applicant  
Ms Cheruiyot for the Respondent