



**Ngetich v Cheptoo & 2 others (Civil Application
E048 of 2026) [2026] KECA 885 (KLR) (8 May 2026) (Ruling)**

Neutral citation: [2026] KECA 885 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E048 OF 2026**

AI HASSAN, JA

MAY 8, 2026

BETWEEN

REUBEN KIPKORIR NGETICH APPLICANT

AND

PAUL BARKEBO CHEPTOO 1ST RESPONDENT

THE LAND REGISTRAR, BARINGO DISTRICT 2ND RESPONDENT

HON. ATTORNEY GENERAL 3RD RESPONDENT

*(Being an application for extension of time from the judgment
of the Environment and Land Court at Kabarnet (Lucy Njoki
Waithaka, J.) dated 30th September, 2025 in ELC No. E003 of 2025)*

RULING

1. Before me is a Notice of Motion dated 19th March 2026, brought under Rule 4 of the Court of Appeal Rules substantively seeking an order granting leave to the applicant to file the notice and record of appeal out of time in an intended appeal against the judgment of the Environment and Land Court (Lucy Njoki Waithaka, J.) dated 30th September, 2025 in Kabarnet ELC No.003 of 2025.
2. The grounds in support of the application are borne on the face thereof and in the affidavit in support sworn by the applicant on 19th March 2026.
3. The application is opposed by the 1st respondent by way of a replying affidavit sworn by the 1st respondent on 10th April 2026. The application was canvassed by way of written submissions. The applicant's submissions are dated 16th April 2026, while those of the 1st respondent are dated 10th April 2026.



4. In summary, the applicant's averments and submissions are that upon the delivery of the judgment by the ELC, Kabarnet, the applicant promptly instructed his erstwhile advocates to appeal against the judgment. The said advocates lodged a notice of appeal that was undated, and the same was not served upon the respondents and was therefore defective. Between the filing of the notice of appeal and the filing of the instant application, he made an effort to reach out to the said advocates on the progress of the matter, all in vain. As a result, he instructed his current advocates to take up the matter.
5. The applicant avers that he only became aware that the notice of appeal was defective upon instructing his current advocates on record. The advocates promptly filed a notice of change of advocates and a valid notice of appeal, but by then, the 14-day statutory timelines had already lapsed.
6. It is contended that the intended appeal has high chances of success, and a draft memorandum of appeal is annexed to the affidavit in support of the application. A further averment is that the respondents will not suffer prejudice should the orders sought be granted.
7. The 1st respondent, on his part, argues that there has been inordinate delay in filing the present application and no reasonable or plausible explanation has been offered. The 1st respondent avers that the applicant has been indolent and is therefore undeserving of the orders sought.
8. 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. 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.]

9. The Supreme Court has reaffirmed the above principles in *Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 others*, SC Application No. 16 of 2014; [2014] eKLR and noted as follows:-
 - 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.”
10. The principles shall be my guide in making my determination herein. As regards the length of delay, in *Sentrim Kenya Limited vs 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.”
11. In the instant case and as regards the length of the delay, it is indeed not in dispute that the impugned judgment was delivered on 30th September 2025. This instant application is dated 19th March 2026. The period is therefore about 5 months and 19 days.
12. The applicant blames his erstwhile advocates for filing a defective notice of appeal. The applicant alleges that he was unaware that the advocates had filed a defective notice of appeal until he appointed his current advocates, who advised him as such. He also blames his advocates for failing to effectively communicate the progress of the matter despite making several attempts.
13. From the conduct of the applicant in this matter, I am satisfied that he was not indolent. He promptly instructed his erstwhile advocates to appeal against the judgment. Although the said advocates lodged a defective notice of appeal, the applicant cannot be faulted for their misstep. Thereafter, he made efforts to reach out to his advocates on the progress of the matter in vain and ultimately had to change representation. In the circumstances, I find his explanation for the delay both reasonable and satisfactory.
14. 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.
15. Finally, on prejudice, it is my considered view that the 1st respondent will not suffer prejudice should the orders sought be granted.
16. 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.
17. Accordingly, the applicant’s motion dated 19th March 2026 is merited, and the same is allowed. The applicant is to file and serve the notice and record of appeal within 30 days from the date of this ruling. Costs shall abide by the outcome of the intended appeal.

DATED AND DELIVERED AT NAKURU THIS 8TH DAY OF MAY, 2026.

AHMED ISSACK

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JUDGE OF APPEAL

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

Signed.



DEPUTY REGISTRAR

