



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyongesa v Lukuyu (Civil Application E024 of 2025)  
[2025] KECA 1044 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1044 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT ELDORET  
CIVIL APPLICATION E024 OF 2025  
JM MATIVO, JA  
JUNE 12, 2025**

**BETWEEN**

**MARTIN NYONGESA ..... APPLICANT**

**AND**

**MILTON MBOYA LUKUYU ..... RESPONDENT**

*(An application for extension of time against the judgement in the High Court of Kenya at Kitale (A.C Mrima, J.) dated 31st January 2025 in Civil Appeal No. E001 “B” of 2020)*

**RULING**

1. Vide an application dated March 21, 2025 brought under Rule 4, and 77 of the [Court of Appeal Rules 2022](#), the applicant prays for extension of time within which to file and serve Notice of Appeal against the Judgment delivered on January 31, 2025 Kitale High Court Civil Appeal No. E001 “B” of 2020.
2. The application is premised on the grounds listed on the face of the application and the applicant’s supporting affidavit sworn on March 21, 2025. The grounds in support of the application are that:- (a) the impugned judgement was delivered on January 31, 2025 without notice to the applicant or at all; (b) the impugned Judgment had been reserved for delivery on June 6, 2024 when the same was not ready and the same was to be delivered by way of notice; (c) the impugned Judgment was delivered virtually in absence of the parties and the same was never uploaded on the e-filing portal for the parties to access it; (d) the applicant became aware of the Judgment upon filing of a bill of costs dated March 4, 2025 filed on March 6, 2025 when time of filing a notice of appeal had lapsed; (e) the instant application has been brought in utmost good faith.
3. The application is not opposed.
4. Vide submissions filed in court on June 4, 2025, the applicant contended that the impugned Judgment came to his knowledge one month and 6 days after it was delivered and that the time to file a notice of appeal had lapsed. Therefore, in the circumstances, this court ought to find that the delay is not



inordinate. For authority the applicant cited the case of *Andrew Kiplagat Chemaringo vs Paul Kipkorir Kibet* [2018] eKLR to buttress his submission on delay.

5. The applicant also maintained that the failure by the learned judge to issue a notice of delivery of Judgment and failure to upload the Judgment on the e-filing platform deprived him of any knowledge of the existence of the impugned Judgment and as a result he could not file a notice of appeal.
6. On the degree of prejudice to the respondent, the applicant submitted that he is aggrieved by the Judgment and he is desirous of appealing and that the respondent stands to suffer no prejudice if the instant application is allowed.
7. I have considered the application, the affidavit in support thereto and its annexures, and the written submissions by the applicant. The only question for determination is whether the applicant has met the threshold for the exercise of the Court's discretion to grant leave for him to file and serve a notice of appeal out of time.
8. The application is governed by Rule 4 of the *Court of Appeal Rules* which provides that:

“The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”
9. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR summed up the applicable considerations as follows:
  - i. Extension of time is not 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,
  - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
10. From the proceedings, it is apparent that judgment in the matter was delivered in the absence of counsel for the parties. The applicant has also contended that the impugned Judgment had been reserved for delivery on June 6, 2024 when the same was not ready and the same was to be delivered by way of notice. However, the impugned Judgment was delivered on January 31, 2025 without notice and in the absence of the parties and their advocates and the applicant became aware of the impugned Judgment when he was served with a bill of costs dated March 4, 2025 on March 6, 2025. These averments of facts have not been controverted.



11. Being of that mind I am inclined to exercise my discretion in favour of the applicant, a task made easier by the absence of opposition to the application. I thus allow the application on the terms that the applicant is granted extension of time to file and serve a notice of appeal against the judgment delivered by A.C Mrima, J. on January 31, 2025 in Kitale High Court Civil Appeal No. E001 “B” of 2020 within 7 days from the date of this ruling. I also order that the applicant shall file and serve the record of appeal within 30 days of the date hereof. Costs of this motion shall be in the intended appeal.

**DATED AND DELIVERED AT ELDORET THIS 12<sup>TH</sup> DAY OF JUNE, 2025.**

**J. MATIVO**

.....

**JUDGE OF APPEAL**

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

Signed.

**DEPUTY REGISTRAR.**

