



**Board of Management, Visa Oshwal Primary School & another v Shree Visa Oshwal Community Nairobi Registered Trustees & 4 others (Civil Application E757 of 2025) [2026] KECA 362 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KECA 362 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E757 OF 2025  
RB NGETICH, JA  
FEBRUARY 27, 2026  
IN THE MATTER OF AN INTENDED APPEAL**

**BETWEEN**

**THE BOARD OF MANAGEMENT, VISA OSHWAL PRIMARY SCHOOL ..... 1<sup>ST</sup> APPLICANT**

**ANTHONY WATHIGI WAMBUI AND KENNEDY MUTIE MBITHI (SUING ON THEIR OWN BEHALF AND AS NEXT FRIENDS OF THEIR CHILDREN, PUPILS AT THE SCHOOL MINORS) ..... 2<sup>ND</sup> APPLICANT**

**AND**

**SHREE VISA OSHWAL COMMUNITY NAIROBI REGISTERED TRUSTEES ..... 1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**THE CABINET SECRETARY, MINISTRY OF EDUCATION . 3<sup>RD</sup> RESPONDENT**

**THE NATIONAL LAND COMMISSION ..... 4<sup>TH</sup> RESPONDENT**

**THE NAIROBI COUNTY GOVERNMENT ..... 5<sup>TH</sup> RESPONDENT**

*(Application for extension of time to file a Notice of Appeal arising from the ruling of the Environment and Land Court at Nairobi in ELC Petition No. 22 of 2024)*

**RULING**

1. Before the Court is an application dated 16th December 2025 in which the Applicants seek extension of time to file a Notice of Appeal against the ruling of the Environment and Land Court delivered on 20th November 2025.



2. The application is supported by the affidavit of David Omondi, the Head Teacher and Secretary to the Board of Management of the 1st Applicant. The Applicants explain that although the ruling was delivered on 20th November 2025, it was only published on the Court Tracking System on 4th December 2025. They further state that the school was closed for the Christmas holidays and that the Board of Management was not fully constituted at the material time, which delayed the issuance of instructions to counsel.
3. The Applicants contend that the intended appeal raises arguable issues, including a constitutional question touching on section 43(2) of the *Basic Education Act*, and that no prejudice will be occasioned to the Respondents if the application is allowed. A draft Notice of Appeal and Memorandum of Appeal were annexed.
4. In response to the application, the respondents filed replying affidavit sworn by Jinit Shah, a member of the 1st Respondent's management committee, it is contended that the Applicants have engaged in repeated litigation over the same subject matter, that some of the prior suits were struck out on grounds of res judicata, and that the intended appeal is frivolous, vexatious, and an abuse of the court process. It is further argued that the explanation for delay is insufficient and that granting the application would prejudice the Respondents and undermine the finality of litigation.
5. In their submissions, counsel for the Applicants maintained that the delay was short amounting to about twelve days resulting from institutional and administrative constraints occasioned by the school holidays. Counsel further submitted that the intended appeal raises a triable constitutional issue and that any prejudice to the Respondents can be adequately compensated by costs.
6. Counsel for the 1st Respondent, on the other hand, urged the Court to decline the application, arguing that the delay was attributable to indolence and that the intended appeal is unarguable as it seeks to reopen issues already determined.
7. This application is brought under Rule 4 of the Court of Appeal Rules, 2022, which vests the Court with an unfettered discretion to extend time. The principles guiding the exercise of that discretion are settled. The Court considers, among other factors, the length of the delay, the reason for the delay, the arguability of the intended appeal, and the degree of prejudice, if any, to the respondent. The discretion is equitable and must be exercised judiciously on a case by case basis.
8. Turning to the circumstances of this case, the delay complained of is relatively short. Taking into account that the ruling was delivered and published during the school holiday period, and that the Applicants are a public educational institution whose governing organs were not fully constituted at the material time, I am satisfied that the explanation offered is plausible and reasonable. The delay cannot, in the circumstances, be described as inordinate.
9. As regards arguability, I have perused the draft Memorandum of Appeal annexed to the application. Without expressing any concluded view on the merits, I am satisfied that the intended appeal raises at least one arguable issue, particularly the constitutional question relating to section 43(2) of the *Basic Education Act*. That is sufficient at this stage, bearing in mind that an arguable appeal need not ultimately succeed.
10. On prejudice, no material has been placed before the Court to demonstrate that the Respondents will suffer prejudice that cannot be adequately compensated by an award of costs. Conversely, declining the application would have the effect of shutting out the Applicants from the appellate process on account of a short and reasonably explained delay.



11. While the 1st Respondent has raised concerns regarding repetitive litigation, those matters go to the ultimate merits and competence of the intended appeal and are best left for consideration by the Court seized of the appeal, should it be filed.
12. Considering circumstances herein, and guided by the overriding objective of facilitating the just, expeditious, proportionate, and affordable resolution of appeals, I am persuaded that this is an appropriate case for the exercise of the Court's discretion in favour of the Applicants.

**13. Final Orders;**

- a. The application dated 16th December 2025 is allowed.
- b. The Applicants shall file and serve the Notice of Appeal within **fourteen (14) days** from the date of this ruling.
- c. Costs of the application shall abide the outcome of the intended appeal.

**DATED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**R. NGETICH**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

