



**Gachungwa & 3 others (Suing on behalf of themselves & 398 others)
v Commissioner for Co-operatives & 3 others (Civil Application
E117 of 2025) [2026] KECA 352 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KECA 352 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E117 OF 2025
M NGUGI, JA
FEBRUARY 27, 2026**

BETWEEN

**JOHN GITHAIGA GACHUNGWA 1ST APPLICANT
WINFRED WANGECHI THEURI 2ND APPLICANT
SAMUEL NDUNG’U GICHURE 3RD APPLICANT
MARTIN KANYEKI WAIHIGA 4TH APPLICANT
SUING ON BEHALF OF THEMSELVES & 398 OTHERS**

AND

**THE COMMISSIONER FOR CO-OPERATIVES 1ST RESPONDENT
GK KARIUKI (AS LIQUIDATOR OF TETU COFFEE FARMERS CO-
OPERATIVE SOCIETY LTD) 2ND RESPONDENT
THE PRINCIPAL SECRETARY, MINISTRY OF INDUSTRIALIZATION & CO-
OPERATIVE DEVELOPMENT 3RD RESPONDENT
THE HON ATTORNEY GENERAL 4TH RESPONDENT**

(Being an application for leave to file an appeal out of time from the judgment of the Hon. Justice Nzioki Wa Makau delivered on the 25th day of February, 2020 at the Employment & Labour Relations Court of Kenya at Nyeri in Nyeri ELRC Judicial Review No. 6 of 2019 arising out of Nyeri ELRC Cause No. 102 of 2015 (formerly High Court Civil Case No. 59 of 2009 at Nyeri))

RULING

1. In their application dated 18th July 2025, the applicants seek leave for the firm of Oenga, Maingi & Omondi, Advocates, to come on record for them; and for leave to file their appeal out of time from the



judgment of the Employment and Labour Relations Court (Nxzioki wa Makau J. (dated 25th February 2020 in Nyeri ELRC JR No. 6 of 2019.

2. The application is expressed to be brought under rules 4, 41, 42 and 5(2)(b) of this Court's Rules, and section 3A and 3B of the *Appellate Jurisdiction Act*.
3. The background to the application emerges from the grounds on which the application is based set out on its face and in the affidavit in support sworn by Samuel Ndung'u Gichure on 18th July 2025. The applicants, suing on their own behalf and on behalf of three hundred and ninety-five former workers of the defunct Tetu Coffee Farmers' Co-operative Society Limited, obtained judgment against the respondents on 24th November 2017 in Nyeri ELRC Cause No. 102 of 2015 for Kshs. 27,718,055.45 together with costs and interest. The decree was not satisfied, and so they filed Judicial Review Application No. 6 of 2019 seeking an order of mandamus to compel the respondents to pay the decretal sum. In the decision dated 25th February 2020, the learned Judge dismissed the application. The applicants lodged a Notice of Appeal on 2nd March 2020 through the firm of Muthigani & Co. Advocates. They did not, however, file an appeal against the judgment. Instead, they filed ELRC JR E008 of 2024 in person, which was dismissed on 15th May 2025 on the grounds that it was res judicata.
4. The applicants then filed the present application through the firm of Oenga, Maingi & Omondi Advocates, as well as submissions in support thereof dated 12th September 2025. They submit that though they filed a Notice of Appeal in time, they were elderly, indigent, and unrepresented, and were unable to lodge the substantive appeal. They aver that they continued to pursue enforcement through other legal and administrative avenues, and only later instructed counsel to pursue the appeal on their behalf. They submit that they did not sleep on their rights, have an arguable appeal, and have brought the present application in good faith.
5. There is no response by the respondents, though served.
6. I have read and considered the application and the applicants' submissions. On an application for extension of time under rule 4 of this Court's Rules, the Court is required to consider the length of the delay, the reason for the delay, the chances of the appeal succeeding and the degree of prejudice to the respondent if the application is allowed- see *Leo Sila Mutiso v. Rose Hellen Wangari Mwangi* [1999] 2 EA 231 and *Paul Musili Wambua v Attorney General & 2 others* [2015] KECA 471 (KLR)
7. In *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR), the Supreme Court held that extension of time is a discretionary and equitable remedy; that the applicant bears the burden of laying a basis for the Court's discretion; that the delay must be explained to the satisfaction of the Court; and that the Court must consider prejudice and public interest.
8. In this case, the judgment that the applicants seek to appeal from was delivered on 25th February 2020, so by the time this application was lodged, five years had elapsed. By any measure, that is a lengthy delay. How do the applicants explain it? They state that while they filed a notice of appeal within the prescribed time, they are elderly litigants who, after dismissal of their judicial review application in JR 6 of 2020, were left without legal representation and pursued other avenues in good faith before securing their present counsel.
9. I recognise that the delay in this matter is lengthy. I note, however, the applicants' situation, and their explanation for the delay: they describe themselves as elderly litigants who have been acting without benefit of counsel in their endeavour to enforce a judgment in their favour obtained about 9 years ago. The holding in *Salat* (supra) that the public interest should be considered, and that delay is not decisive where the explanation is satisfactory, inclines me to exercise discretion in favour of the applicants, who



have been seeking justice since 2009; are elderly, have a judgment in their favour; and may have been pursuing satisfaction of the decree in their favour through the wrong process, understandable when parties are unrepresented.

10. I also note that the respondents, though served, have not deigned to file a response and place their views on the matter before the Court. I cannot, therefore, discern any prejudice the respondents may suffer if the orders sought are granted.
11. With regard to the question of the possibility of the applicants' appeal succeeding, I confine myself only to observing that in their Draft Memorandum of Appeal and in the submissions, they raise arguments against the decision of the trial court that cannot be said to be frivolous: they argue, inter alia, that the learned Judge, in his decision, misapprehended the nature of mandamus and effectively reopened or undermined a final judgment-the judgment in ELRC 102 of 2015 that had not been appealed from.
12. I note that the applicants have also sought leave for the firm of Oenga, Maingi & Omondi to come on record. I believe no such leave is required, there being no proceedings before this Court other than the present application.
13. Accordingly, I hereby grant the applicants leave to file their appeal against the decision in ELRC JR No. 6 of 2019. In doing so, I note that the applicants have not deposed that they applied for the typed proceedings and would therefore be in a position to file their appeal expeditiously. They now have counsel on record, so the handicap of being litigants in person relied on in this application will not be available to them in future.
14. Accordingly, I hereby grant the following orders:
 - i. The applicants are granted leave to file and serve their Memorandum and Record of Appeal out of time.
 - ii. The Memorandum and Record of Appeal shall be filed and served within 45 (45) days from the date hereof.
 - iii. There shall be no order as to costs.

DATED AND DELIVERED AT NYERI THIS 27TH DAY OF FEBRUARY 2026

MUMBI NGUGI

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

