



Memusi - Officer Commanding Station Kwa Reuben Police Station & 5 others v Board of Management - Gatoto Community Primary School (Non-Profit Community Based) Apbet Primary School & 2 others (Civil Appeal (Application) E472 of 2025) [2026] KECA 411 (KLR) (27 February 2026) (Ruling)

Neutral citation: [2026] KECA 411 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E472 OF 2025**

**J MOHAMMED, JA
FEBRUARY 27, 2026**

BETWEEN

NICHOLAS MEMUSI - OFFICER COMMANDING STATION KWA REUBEN POLICE STATION 1ST APPLICANT
PETER WABWOBA MAKALI - ASSISTANT COUNTY COMMISSIONER EMBAKASI 2ND APPLICANT
MARY KIMEU - SUB-COUNTY EDUCATION CENTER 3RD APPLICANT
DAVID NDIRANGU – CHIEF KWA REUBEN POLICE STATION 4TH APPLICANT
COUNTY EDUCATION BOARD – NAIROBI COUNTY 5TH APPLICANT
REGIONAL DIRECTOR FOR EDUCATION 6TH APPLICANT

AND

THE BOARD OF MANAGEMENT - GATOTO COMMUNITY PRIMARY SCHOOL (NON-PROFIT COMMUNITY BASED) APBET PRIMARY SCHOOL 1ST RESPONDENT
THE BOARD OF MANAGEMENT - GATOTO COMMUNITY PRIMARY SCHOOL (NON-PROFIT COMMUNITY BASED) BOARD OF DIRECTORS 2ND RESPONDENT
ROBINSON KOMBO OGECHI 3RD RESPONDENT

(Being an application for leave to file an appeal out of time against judgment of the High Court at Nairobi (B. Mwamuye, J.) dated 12th June 2025 in Constitutional Petition No. E686 of 2024)



RULING

Background

1. This is an application brought by Nicholas Memusi - Officer Commanding Station kwa Reuben Police Station, Peter Wabwoba Makali - Assistant County Commissioner Embakasi, Mary Kimeu - Sub-County Education Center, David Ndirangu – Chief Kwa Reuben Police Station, County Education Board – Nairobi County, Regional Director For Education (the applicants) under Rule 4 of the Court of Appeal Rules, 2022 seeking leave to file a Notice of Appeal out of time against the judgment of the High Court (B. Mwamuye, J.) delivered on 12th June 2025 in Constitutional Petition No. E686 of 2024.

The Board of Management - Gatoto Community Primary School (Non- Profit Community Based), Apbet Primary School, The Board of Management - Gatoto Community Primary School (Non-Profit Community Based) Board of Directors and Robinson Kombo Ogechi are the 1st to 3rd respondents respectively.

2. The impugned judgment declared unlawful the conversion of Gatoto Community Primary School into a public institution, quashed the certificate of registration dated 15th October 2024, and directed its registration as a private non-profit APBET institution.
3. Under Rule 77(2) of the Court of Appeal Rules, a Notice of Appeal is required to be lodged within fourteen (14) days of the decision. The applicants filed their Notice of Appeal eight (8) days outside that period.
4. Rule 4 vests in this Court wide and unfettered discretion to extend time. That discretion, however, must be exercised judicially and on settled principles.
5. The governing considerations were articulated in *Leo Sila Mutiso v Hellen Wangari Mwangi* [1999] 2 EA 231: the length of delay; the reason for the delay; the degree of prejudice to the respondent; and (possibly) the chances of the appeal succeeding.
6. These principles have been reaffirmed in subsequent decisions including *Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others* [2013] eKLR. In *Mombasa County Government v Kenya Ferry Services Ltd* [2019] eKLR, the Court reiterated that short and non-prejudicial delays ought not to defeat substantive appellate rights, provided the applicant has offered a reasonable explanation and no injustice would be occasioned to the respondent.
7. The delay in the present matter is eight (8) days beyond the prescribed period.
This Court has repeatedly held that short delays, where satisfactorily explained, ought not to defeat the right of appeal.
8. The explanation advanced is that counsel for the applicants was indisposed during the relevant period. Although no medical documentation was annexed, the delay is minimal and there is no suggestion of deliberate disregard of the Rules or bad faith.
9. The draft memorandum of appeal discloses questions concerning interpretation of the *Basic Education Act*, 2013, the scope of executive authority in school registration, and constitutional compliance in educational governance.
10. These issues are not frivolous and raise bona fide questions deserving appellate consideration.



11. The respondents invoke Article 53 of *the Constitution*. While the best interests of the child are paramount, the appellate process itself is a lawful mechanism for ensuring legality, accountability, and proper constitutional interpretation.
12. No specific or irreversible prejudice has been demonstrated that would result from an eight-day delay.
13. Article 159(2)(d) does not abrogate procedural rules but requires that they be applied in a manner that serves substantive justice.
14. Considering the relatively short delay, the explanation tendered, the absence of demonstrated prejudice, and the arguable issues raised, I am satisfied that this is a proper case for the exercise of discretion under Rule 4.
15. Accordingly, the Notice of Motion dated 6th July 2025 is allowed.
16. The Notice of Appeal dated 4th July 2025 is deemed as duly filed and served.
17. Costs shall abide the outcome of the intended appeal.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY, 2026

JAMILA MOHAMMED

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

Deputy Registrar

