



**Lemurian & 28 others v Church Commissioner of Kenya (Civil Application
E072 of 2025) [2026] KECA 317 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KECA 317 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E072 OF 2025
MA WARSAME, JA
JANUARY 22, 2026**

BETWEEN

**PAMELA JETO LEMURIAN & 28 OTHERS & 28 OTHERS & 28 OTHERS & 28
OTHERS & 28 OTHERS & 28 OTHERS & 28 OTHERS APPLICANT**

AND

CHURCH COMMISSIONER OF KENYA RESPONDENT

*(An application for extension of time to file an Appeal out of time against
the ruling of the High Court at Eldoret delivered on 2nd October 2025)*

RULING

1. The applicants have filed the instant application dated 24th October 2025 seeking that “This Honourable Court be pleased to grant leave to extend the time for filing of the Appeal herein.”
2. The applicants seek to challenge the ruling delivered on 2nd October 2025 which dismissed their notice of motion dated 23rd December 2024. Notably, neither the application nor the supporting affidavit discloses the subject matter of the underlying dispute and the grounds upon which the High Court dismissed the motion.
3. The applicants are aggrieved by the said ruling and wish to appeal against it. However, the time within which to file the appeal has since lapsed, hence this application.
4. The reasons for delay as stated on the face of the application and supporting affidavit are that “the delay aforementioned was occasioned by the Applicant's lack of funds to enable them in filing fees for the Appeal and they are elderly and/or advanced in age and unemployed and which delay is regretted.”
5. The respondent has not filed a replying affidavit. However, the applicants contend that the respondent has begun the process of executing the ruling which would cause the applicants substantial harm and render the intended appeal nugatory.



6. I have considered the application, the affidavit filed, and the applicable legal principles. The question before me is whether the applicants have established sufficient reason to warrant the exercise of this Court's discretion to extend time for filing a notice of appeal out of time.
7. The principles governing applications for extension of time are well settled. As the Supreme Court stated in *Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR, the discretion to extend time is unfettered, but it is incumbent upon the applicant to explain the reasons for delay and demonstrate whether there are any extenuating circumstances that can enable the court to exercise its discretion in favour of the applicant. The Supreme Court derived the following underlying principles that a court should consider in exercising such discretion:
 1. 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;
 2. A party who seeks extension of time has the burden of laying a basis to the satisfaction of the court;
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
8. As further elaborated in *Fakir Mohamed vs Joseph Mugambi & two others*, Civil Application No. Nai. 332/04, the exercise of this Court's discretion under Rule 4 is unfettered, and there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits, and the resources of the parties are all relevant factors to be considered.
9. I now turn to examine whether the applicants have discharged the burden placed upon them by the aforementioned principles. First, on the period of delay: the ruling was delivered on 2nd October 2025. The 14 day statutory period for filing a notice of appeal expired on or about 16th October 2025 representing a delay of about 8 days, which in the circumstance cannot be characterized as inordinate or excessive.
10. As for the reason for delay, the applicants' explanation is lack of funds due to being elderly, unemployed, and advanced in age.

While this explanation remains bare and unsubstantiated, I must take into account the crucial fact that the 29 applicants are appearing in person without legal representation. The claim of poverty by twenty-nine individuals who are elderly and unemployed is, on its face, plausible.
11. They have acted within a reasonable period after the expiry of the statutory time limit. A delay of eight days, particularly for unrepresented litigants, falls within the realm of excusable delay.



12. While it is true that the applicants have not disclosed the nature of the underlying dispute or provided details of the grounds of appeal, I note that they are lay litigants who may not appreciate the importance of placing such material before the Court at this interlocutory stage. The absence of such information does not, in my view, warrant denying them the opportunity to file their notice of appeal, particularly given the short nature of the delay.
13. In the result, this application is allowed. The applicants are granted fourteen (14) days from the date of this ruling to file and serve a notice of appeal.
14. No orders to cost.

DATED AND DELIVERED AT ELDORET THIS 22ND DAY OF JANUARY, 2026.

M.WARSAME

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

