



**Lemushen v Republic (Criminal Application E013 of 2026)
[2026] KECA 867 (KLR) (5 May 2026) (Ruling)**

Neutral citation: [2026] KECA 867 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E013 OF 2026**

AI HASSAN, JA

MAY 5, 2026

BETWEEN

EMMANUEL LEMUSHEN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant Emmanuel Lemushen seeks extension of time to allow him to file a notice of appeal out of time against a decision of the High Court of Kenya at Kilgoris in Criminal Appeal No. 36 of 2023 which upheld his conviction and sentence for the offence of defilement.
2. The application is undated and is supported by an equally undated affidavit that is finger-printed with no clear indication that it was duly commissioned. In it, the applicant attributes the delay to the lack of an Advocate to follow up the matter, as he comes from a poor background. The Director of Public Prosecutions did not oppose the application.
3. As the applicant does not state the date of the judgment of the High Court against which he intends to appeal, I am not able to determine the length of delay. However, I am cognizant of the constraints that an incarcerated prisoner without legal representation operates under in an effort to pursue legal redress. The applicant is condemned to life imprisonment for the offence of defilement. I am inclined to adopt a more accommodating stance and to overlook omissions to enable the applicant pursue his appeal. I exercise my discretion in order to allow him to pursue his right of appeal, on sentence and conviction.
4. The Supreme Court in *Salat v Independent Electoral and Boundaries Commission & 7 others* (Application 16 of 2014) [2014] crystallised the principles governing extension of time as follows :-
 - i. Extension of time being not a right of a party, but an equitable remedy that is only available to a deserving party at the discretion of the Court;



- ii. The party who seeks 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-by-case basis;
 - iv. Where there is a reasonable cause for the delay, the same should be expressed to the satisfaction of the Court;
 - v. Whether there will be any prejudice suffered by the respondents if extension is granted;
 - vi. Whether the application has been brought without undue delay;
 - vii. In certain cases, like election matters, public interest should be a consideration for extending time.
5. In the result, I allow the application and direct that the applicant do file a notice of appeal within fourteen (14) days of this ruling. The prison authorities should extend to the applicant such assistance as will ensure the notice is filed and lodged at the registry of this Court within the time I have stipulated.

DATED AND DELIVERED AT NAKURU THIS 5TH DAY OF MAY, 2026.

AHMED ISSACK

JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR

Page 1 of 3

