



**Bill & 3 others v Keter & another (Civil Application
E049 of 2026) [2026] KECA 883 (KLR) (8 May 2026) (Ruling)**

Neutral citation: [2026] KECA 883 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E049 OF 2026**

AI HASSAN, JA

MAY 8, 2026

BETWEEN

**RICHARD KIPRONO BILL 1ST APPLICANT
KENNEDY CHERUIYOT KETER 2ND APPLICANT
FRANKLIN KETER 3RD APPLICANT
JOASH KETER 4TH APPLICANT**

AND

**WILSON KETER 1ST RESPONDENT
BENARD KETER 2ND RESPONDENT**

(Being an application seeking leave to appeal and extension of time for filing a notice and record of appeal out of time in the intended appeal from the judgment of the High Court at Kericho (Dr. Serгон, J.) dated 12th October 2023 in Succession Cause No.193 of 2008)

RULING

1. By way of a Notice of Motion dated 26th March 2026, the applicants invoke the provisions of rule 4 of this Court, seeking in principle an order for extension of time within which to file a notice and record of appeal.
2. The grounds in support of the application are borne on the face thereof and in the affidavit in support sworn by Richard Kiprono, the 1st applicant herein.
3. In summary, the applicants aver that after delivery of the High Court judgment on 12th October 2023, they were dissatisfied with the said judgment and proceeded and lodged a notice of appeal on 24th October 2023 and applied for typed proceedings.



4. The applicants aver that the delay in lodging the memorandum and record of appeal was occasioned by extreme financial hardship, which prevented them from retaining counsel to advise on the appellate process. Being lay persons, they were unaware of the statutory timelines governing the filing of the memorandum and record of appeal.
5. It is contended that the intended appeal is not only arguable but has high chances of success. However, a draft memorandum of appeal has not been annexed to the affidavit in support of the application.
6. I have considered the application, grounds in support thereof, the submissions, as well as the law. Rule 4 of the Court of Appeal Rules does not provide for factors the court ought to consider in an application for extension of time, but courts have devised appropriate principles to be applied in achieving a ‘just’ decision in the circumstances of each case. The case of *Leo*

Sila Mutiso v Rose Hellen Wangari Mwangi [1999], which is the locus classicus, laid down the parameters as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”[Emphasis supplied.]

7. The Supreme Court has recently pronounced guiding principles in considering an application for extension of time in *Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 others*, SC Application No. 16 of 2014; [2014] eKLR. These principles are:-
 - i) 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.
 - ii. A party who seeks for 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. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court.
 - v. Whether there will be any prejudice suffered by the respondents if the extension is granted.
 - vi. Whether the application has been brought without undue delay; and
 - v) Whether, in certain cases, like election petitions, public interest should be a consideration for extending time.”
8. As regards the length of delay, in *Sentrim Kenya Limited v CFC Stanbic Bank Limited* [2021] KECA 648 (KLR) this Court stated that there is no maximum or minimum period of delay set out under



the law. However, the reason or reasons for the delay must be reasonable and plausible. In *Andrew Kiplagat Chemarigo v Paul Kipkorir Kibet* [2018] eKLR, this Court stated:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favorably exercisable.”

9. In the instant case and as regards the length of the delay, the impugned judgment was delivered on 12th October 2023. The applicant then proceeded to seek leave to lodge an appeal from the High Court in October of 2025, and the application was dismissed by the superior court. The instant application is dated 26th March 2026. The delay is inordinate.
10. Is the explanation for the delay excusable? The applicants contend that the delay in lodging the memorandum and record of appeal was occasioned by ignorance of the law and financial hardship, which prevented them from retaining counsel. It is trite law that ignorance of the law is no defence. As the Supreme Court emphasized in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others* [2014] Supra, extension of time is not a right but an equitable remedy, available only to a deserving party who demonstrates sufficient cause. Ignorance of the law and lack of counsel, without more, cannot justify indolence. Indeed, the applicants did lodge a notice of appeal, which demonstrates that they had some guidance on the appellate process, and they are not being candid with this court.
11. In the circumstances, I find that the reasons advanced fall short of the threshold required under Rule 4 and do not warrant the exercise of this Court’s discretion. As the reason for the delay has not been satisfactorily explained by the applicants, it would be superfluous for me to apply my mind to the other factors to be considered in applications of this nature.
12. In the result, I decline to exercise my discretion to grant the prayer to extend time. Accordingly, I dismiss the application dated 9th October 2025. Since no response has been made to the application, I shall make no orders as to costs.

DATED AND DELIVERED AT NAKURU THIS 8TH DAY OF MAY, 2026.

AHMED ISSACK

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR

