



REPUBLIC OF KENYA



**Kipchirchir v Republic (Miscellaneous Application
63 of 2023) [2025] KEHC 4358 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4358 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS APPLICATION 63 OF 2023**

RN NYAKUNDI, J

APRIL 4, 2025

FROM CRIMINAL CASE NO SO E071/020 AT ELDORET COURT OF LAW

BETWEEN

SHADRACK KIPCHIRCHIR APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against conviction and Sentence in SO Criminal Case No E. 071/020
by the Hon Naomi Wairimu (SPM) delivered on the 5th day of November, 2021)*

RULING

1. The application before this court is a Notice of Motion dated 28.5.2024 seeking the following orders:-
 - a. That may the honourable court be pleased to order that the same be given priority in hearing and determination
 - b. That due to my earlier intention to appeal, I beg leave of this honourable court for an extension to appeal out of time for lack of appeal records and I feel its running too late without an appeal thus this present application which application is based on the following grounds
 - a. The learned trial magistrate erred in law and fact by convicting the appellant but failed to note that the age of the complainant was not conclusively proved.
 - b. That the learned trial magistrate erred in law and fact by convicting the appellant but failed to note that the age of the complainant was not conclusively proved
 - c. That the learned trial magistrate erred in law and fact by convicting the appellant but failed to note that the penetration was not proved.
 - d. That further grounds shall be adduced at the hearing of this appeal



- e. That I wish to present the hearing and determination for this appeal out of time against the conviction and sentence and which application is supported by the annexed affidavit of Shadrack Kipchirchir and by such other grounds, reasons and arguments as shall be adduced at the hearing thereof:
 - a. That I am a male Kenyan adult of sound mind and the appellant herein and as such conversant with the facts of these case and therefore competent to swear this affidavit
 - b. That I was charged with the offence of defilement contrary to section 8(1) as read with 8(4) of the *Sexual Offences Act* No 3 of 2006 and sentenced to 30 years imprisonment in SO Criminal Case No E071/20 at SPM’s Court Eldoret on 5th day of November 2021
 - c. That I was not supplied with court proceedings record leading to my Appeal out of time
 - d. That due to my earlier intention to appeal, I beg leave of this honourable court for an extension time to appeal.
 - e. That I pray to be supplied with a copy of the court proceedings and its judgement
 - f. That Further grounds shall be adduced at the hearing of this appeal
 - g. That I wish to be present during the hearing and determinization of this appeal out of time
 - h. That what I have deponed herein is true to the best of my knowledge and belief.
2. It is trite law that Under Section 349 as read with 349 (A) of the *CPC* the timeframe in which an aggrieved Appellant is required to lodge an Appeal from the decision of the magistrate’s court is set at 14 days. The same court provides for discretionary jurisdiction of the court to extend time for one to be allowed to file an appeal out of time. The purposive approach to interpretation of the statute in order to exercise judicial discretion requires a court to look at the purpose of the statute and the legislatures intention when they enacted the statute as well as the words written in the statute itself. The words must be interpreted in the broader context of the statute itself.
3. The proper approach to giving meaning to the criminal procedure code provisions on extension of time is also to give effect to the constitutional imperatives on the fundamental rights and freedoms of each individual. That exercise of discretion is more often guided by the principles in the realm of Civil Law as supported by the following Case Law: “ *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* - Civil Application No Nai 255 of 1997 (unreported) “ this Court in dealing with the issue of application for extension of time within which to file and serve Notice of Appeal and Record of Appeal stated inter alia: “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” ...Reliance was further placed on the decision of *Muringa Company Limited v Archdiocese of Nairobi Registered Trustees* [2020] eKLR, where Ouko, (P), as he then was posited as do the of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution



of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.

4. This judicial discretion to extend time as anchored in the law is for the reliefs for any sanctions imposed for a failure to comply with any of the provisions of the statute with declarations that on matters of appeal it must be made promptly without any breach. The court therefore, has got to look at the entire specifics of the case and once satisfied that the failure to comply was not intentional, there is a good explanation by the Applicant for the failure not to follow the rules of procedure on timelines and that the Applicant in default as generally complied with all other relevant rules, practice directions and orders as it pertains to the appeal process.
5. The Applicant has explained himself that part of the reasons why delay was occasioned was due to non-supply by the trial court with a copy of the court proceedings and its judgement. On my part I adopt the reasoning provided for in the above case law so as to exercise discretion to extend time to the Applicant to file his Appeal out of time within 30 day from today's date.
6. It is so ordered.

GIVEN UNDER MY HAND AND THE SEAL OF THE COURT THIS 4TH DAY OF APRIL 2025

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R. NYAKUNDI

JUDGE

