



REPUBLIC OF KENYA



**Lugongo v Republic (Miscellaneous Application E051 of 2023)  
[2025] KEHC 4347 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4347 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS APPLICATION E051 OF 2023  
RN NYAKUNDI, J  
APRIL 4, 2025**

**BETWEEN**

**PATRICK LUGONGO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged, tried and convicted to 20 years imprisonment by the Chief Magistrate’s Court at Eldoret in Cr, Case No 1228 of 2015. He has now moved the court by dint of Notice of Motion dated 18.4.2024 seeking the following orders:
  - a. That may the Hon. court be pleased to order that this application to appeal out of time be allowed.
  - b. That may the honorable court be pleased to order that the same be given priority in hearing and determination

Which application is based on the following grounds:

- a. That I was charged and convicted and sentenced for the offence of defilement contrary to section 8(i) as read with section 8(3) of the sexual offences act No 3 of 2006
- b. That I seek to appeal out of time
- c. That the High Court has competent jurisdiction to hear and determine this application under Article 165(3) (b) of the constitution of Kenya 2010
- d. That the Hon. Court be pleased to award me a lenient definite sentence pursuant to Article 50(2) (p) (q) of the constitution

Decision



I have considered the application seeking the extension of time to file and Appeal out of time as I bear in mind that this jurisdiction is vested with the court to exercise its unfettered discretion. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* (2014) eKLR set out the consideration to guide the court in exercising its discretion in cases seeking extension of time. It stated “

- “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-to-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
- vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

2. Given this background of the guiding principles the Applicant in this Notice of Motion has explained himself that upon conviction and sentence he was desirous of engaging and advocate to assist him in canvassing the intended Appeal but due to lack of financial resources that need was never met. As a consequence, the statutory timeframe of 14 days in which to file and Appeal expired hence the need to seek enlargement of time from this court.
3. In my considered view, the criteria set out in *Nicholas Kiptoo Arap Korir Salat* (Supra) has been satisfied by the Applicant for the court to exercise discretion in granting extension of time to file his Appeal out of time. As a compliance dictate he has 30 days from today’s date to file the necessary record of Appeal to facilitate the same to be set down for hearing.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT ON THIS 4<sup>TH</sup> DAY OF APRIL 2025**

.....

**R. NYAKUNDI**  
**JUDGE**

