



REPUBLIC OF KENYA



**Ombasa v Republic (Miscellaneous Application E021 of 2024)  
[2025] KEHC 4342 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4342 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS APPLICATION E021 OF 2024  
RN NYAKUNDI, J  
APRIL 4, 2025**

**BETWEEN**

**NICODEMUS OMBASA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The application before me seeks leave to appeal out of time. He was charged and convicted with the offence of grievous harm contrary to section 234 of the *Penal Code*. Subsequently, the court imposed a sentence of 10 years. The applicant is aggrieved with the said decision and wishes to appeal albeit out of time.
2. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR set out the considerations 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.”
3. Having considered the applicant’s motion and the principles laid down in the cited case law, I find that the right to appeal is a fundamental right, and the interests of justice would be best served by allowing the applicant an opportunity to challenge his conviction and sentence. The respondent has not demonstrated any prejudice that would be suffered if the extension is granted. Furthermore, the severity of the sentence imposed (10 years’ imprisonment) warrants appellate scrutiny to ensure that justice was properly administered.
  4. Accordingly, the application for leave to appeal out of time is hereby allowed. The applicant is granted 30 days from the date of this ruling to file his appeal. The matter shall be mentioned before the Deputy Registrar on 9<sup>th</sup> May, 2025 for compliance on the typed proceedings and further directions.
  5. This file is marked as closed.
  6. It is so ordered.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 4<sup>TH</sup> DAY OF APRIL 2025**

.....

**R. NYAKUNDI**

**JUDGE**

