



**Komen v Republic (Miscellaneous Application E088 of 2024)
[2025] KEHC 6980 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6980 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS APPLICATION E088 OF 2024
RN NYAKUNDI, J
MAY 23, 2025**

BETWEEN

MICAH KIPRUTO KOMEN APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application dated 6th day of August 2024 seeking the following orders;
 - i. That this matter be certified as urgent and be heard at the first sentence
 - ii. That may the honourable court be pleased to order that the same be given priority in hearing and determination
 - iii. That I am seeking to appeal against the decision delivered in offence of attempted murder contrary to section 220 of the penal code and sentenced to 30 years imprisonment sentence vide case no. E143 of 2020 at Eldoret CM'S court
 - iv. That may the court be pleased and allow my appeal filed out of time; annexed in the supporting affidavit of NAV/394 /023/LS; Micah Kipruto Komen.
 - v. That due to my earlier intention to appeal, beg leave of this honourable court for an extension time to appeal out of time
 - vi. That the appellant prays to be present during the hearing of this application/appeal
 - vii. That other grounds may be adduced during the hearing hereof
It is supported in the annexed affidavit which states as follows
 - i. That I am a male Kenyan of sound of mind and the appellant herein and such conversant with facts of the case and therefore competent to swear this affidavit.



- ii. That I was charged with the offence of attempted murder contrary to section 220 of the penal code and sentenced to 30 years imprisonment sentence vide case no. E143 of 2020 at Eldoret CM'S court and convicted and sentenced to 30 years imprisonment
 - iii. That I am seeking leave of this honourable court for an extension to appeal.
 - iv. That I would not appeal on time because I was not supplied with the High court judgement on time to enable me lodge my appeal.
 - v. That may this court waive me any court fees that may be applicable in this matter because I am a pauper.
 - vi. That I wish to be present at the hearing of this appeal
 - vii. That what I have deponed herein is true to the best of my knowledge, belief and trust.
2. It is central to the concept of a fair trial under Art 50 be of the constitution be either Civil or Criminal proceedings like in the instant case a party is not denied the opportunity to present his or her case effectively before that anticipated forum. The provisions of Art 349 of the CPC provides at an Appeal to the High Court shall be filed within 14 days from the date of judgement. In the proviso the court is clothed with unfathered discretion to enlarge time in which the aggrieved party can file the intended Appeal out of time. What is of significance is for the court to exercise that discretion within the given guidelines and principles developed over time in the various Case Law. In line with this guideline, the comparative jurisprudence in *Sayers v Clarke* 2002 EWCA 645 the court observed that it follows:
- a. The interests of the administration of justice
 - b. Whether the application for relief has been made promptly
 - c. Whether the failure to comply was intentional
 - d. Whether there is a good explanation for the failure
 - e. The extent to which the party in default has complied with other rules, practice directions and court orders
 - f. Whether the failure to comply was caused by the party or his legal representative
 - g. The effect which the failure to comply had on each party and
 - h. The effect which the granting of relief would have on each in the case of procedural appeal the court would also have to consider item(g) whether the trial date or the likely trial can still be met if relief is granted.
3. In our domestic jurisprudence the court in *Salat v Independent Electoral & Boundaries Commission & 7 Others* 2014 eKLR the court inter-alia held that the court should consider in exercise of such discretion:
- 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 petition, public interest should be a consideration for extending time.
4. In the instant case, I have considered the material which is before me which could justify granting an extension of time. The application is based on non-supply of the judgement and the trial court record before the expiry of 14 days. The *constitution* in Art 50 (5) (B) provides as follows: “That the accused person has the right to a copy of the record of the proceedings within a reasonable period after they are occluded in return for a reasonable fees as prescribed by law. I take judicial notice on the challenges the Judicial system faces in achieving this objective which is a constitutional imperative within a reasonable time. However, notwithstanding that position, an Applicant intending to appeal against the impugned judgement may find it difficult to extract the grounds of Appeal without a copy of the said decision. In my view therefore, that is sufficient cause to justify such an application for extension of time for the Appeal to be filed out of time.
5. It is so ordered.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 23RD DAY OF MAY 2025

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R. NYAKUNDI

JUDGE

