



**Kiprop v Republic (Criminal Miscellaneous Application
E139 of 2024) [2025] KEHC 6585 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6585 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E139 OF 2024**

RN NYAKUNDI, J

MAY 20, 2025

BETWEEN

RODGERS KIMELI KIPROP APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application in the above mentioned case seeking the following orders:
 - a. That the prayers sought are for the leave of appeal out of time to the court of appeal pursuant to section 349 of the CPC in reliance with article 48, 50(2) (q) of the Constitution of Kenya
 - b. That the application is seeking enforcement of the above provisions of the law and constitution
It is further supported by an affidavit sworn by Rodgers Kimeli Kiprop which states as follows:
 - i. That I am a male adult Kenyan citizen of sound mind capable of swearing this affidavit
 - ii. That I was arrested, charged, convicted and sentenced to 4 years imprisonment for the offence of stealing stock contrary to section 278 of the Penal Code
 - iii. That I now wish to lodge my application to this Hon. Court seeking leave to appeal out of time to the court of appeal
 - iv. That I lodge the said application pursuant to section 349 of the CPC
 - v. That I swear this affidavit in good faith in support of my petition in the High Court of Eldoret
 - vi. That I know of my own knowledge that all I have deponed herein in is true and correct to the best of my knowledge understanding and belief



2. The application to extend time in criminal cases is based on Section 349 of the [Criminal Procedure Code](#) and the entrenched provisions of the [Constitution](#) on the right of Appeal of every litigant aggrieved with the decision of the trial court which is subordinate to an Appeal's court which is usually a superior forum to interrogate the errors of law and fact of the impugned judgement.
3. In interpreting the provision, I am persuaded to apply the principles in civil cases under the doctrine of pari materia. The Court of Appeal in [Seventh Day Adventist Church East Africa Ltd & another v M/s Masosa Construction Company](#) Civil Application No 349 of 2005 which states as follows: “As the discretion to extend time is unfettered, there is no limit to the number of factors the Court would consider so long as they are relevant; the period of delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the Respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with the time limits, the resources of the parties, whether the matter raises issues of public importance are all relevant but not exhaustive factors...In an application for extension of time, each case must be decided on its own peculiar facts and circumstances and it is neither feasible nor reasonable to lay down a rigid yardstick for measuring periods of delay as explanations for such delays are as many and varied as the cases themselves...The ruling striking out the appeal is not only necessary for exhibiting to the application for extension of time but also for consultations between the applicant's counsel and their clients and the fact that the ruling was returned to Nairobi for corrections is a reasonable explanation for the delay... Where the Respondent has already recovered all the decretal sum and costs attendant to the litigation, the right of appeal being a strong right which is rivalled only to the right to enjoy the fruits of judgement, no prejudice would be caused to the respondent who has enjoyed his rights in full if an opportunity is given to the applicants to enjoy theirs too, even if it is on a matter of principle
4. It is trite that every Appeal to be preferred from the subordinate court to the High Court shall be filed within 14 days from the date of conviction and sentence. However, the court has unfettered discretion to extend time where the Applicant or intended Appellant demonstrates sufficient cause why he or she was unable to meet the statutory timelines. In this regard I have reviewed the Application and the trial court record and I am agreeable with the Applicant that there exist compelling and substantial circumstances to warrant this court to extend time for him to exercise his constitutional right of Appeal.
5. For the foregoing reasons the Deputy Registrar of the High Court shall cause the proceedings of the trial court to be supplied to the Applicant within 30 days from today's date and thereafter, leave is granted for the filing of the record of Appeal.
6. Orders accordingly.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 20TH DAY OF MAY 2025

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R. NYAKUNDI
JUDGE

