



**Maiyo v Republic (Criminal Miscellaneous Application
E116 of 2024) [2025] KEHC 6875 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6875 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E116 OF 2024**

RN NYAKUNDI, J

MAY 20, 2025

BETWEEN

GEOFFREY KIPNGETICH MAIYO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application in the above mentioned case seeking the following orders:
 - a. That the application be certified as urgent and be heard on priority basis
 - b. That the Honourable Court be pleased to grant leave to the Applicant/Applicant to appeal out of time against the Judgement made by Hon. P.N Areri SPM on 16.9.2024
 - c. That Costs of this Application be provided for
Which Applciaitonis supported by the grounds set out hereunder, and the Annexed affidavit of David Fedhaand other grounds to be adduced at the hearing of this application.
 - i. That on 28.4.2022, the Respondent was charged before the Chief Magistrate’s Court with the offence of Defilement contrary to section 8(1) as read with Section 8(2) of the [sexual offences Act](#).
 - ii. That the complainant was a minor aged 14 years J.K.K
 - iii. That on 16.9.2024, the trial court delivered its judgement and consequently acquitted the Respondent under Section 215 of the [Criminal Procedure Code](#)
 - iv. That the Applicant/victim requested for certified copies of the proceedings, or judgment in Eldoret MCSO No. E059/2022



- v. That the Appellant/Applicant being aggrieved by the said decision is filing an application for leave to file an appeal out of time.
 - vi. That meanwhile, the time for appeal has run out
 - vii. That it is in the interest of justice that the Appellant/applicant be allowed to file an appeal against said judgment
2. 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”
3. 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.
4. 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.
5. Orders accordingly.

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

R. NYAKUNDI

JUDGE

