



**Simiyu v Republic (Miscellaneous Criminal Application  
E044 of 2024) [2025] KEHC 6476 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6476 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS CRIMINAL APPLICATION E044 OF 2024  
RN NYAKUNDI, J  
MAY 23, 2025**

**BETWEEN**

**JOHN SIMIYU ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before this court is an application in the case as follows:
  - i. That this matter be certified as urgent and be heard at the first instance
  - ii. That may the honourable court be pleased to order that, the same be given priority in hearing and determination
  - iii. That may the court be pleased and allow my appeal filed out of time, annexed in the supporting affidavit by the names John Simiyu with a memorandum of appeal
  - iv. That the appellant prays to be present during the hearing of this application/ appeal
  - v. That other grounds may be adduced during the hearing here

The same is supported by an affidavit sworn by the said John Simiyu which states as follows:

- i. That I was convicted for the offence of robbery with violence contrary to section 296(2) of the penal code and sentenced to suffer death vide criminal case no. 3143 of 2002 at CM'S court Eldoret
- ii. That my subsequent appeal to the high court by Hon. J.M.K. Ibrahim (J) and P.M Mwilu (J) was dismissed and hence the current appeal.



- iii. That I humbly urge this hon court to consider my appeal filed out of time. that I had the intention to appeal. However, I was not supplied with trial court records and its judgment to enable me appeal out of time
- iv. That my appeal has high chances of success. Annexed is the memorandum ground of appeal.
- v. That other further grounds to be adduced at the hearing of this application and appeal thereof
- vi. That I further swear that all that I have stated herein is true and correct to the best of my knowledge, information and belief.

2. The question is whether this court has jurisdiction to extend time to file an Appeal out of time which has been dismissed by the very court being presided over Hon. J.M.K. Ibrahim (J) and P.M Mwilu (J) as they were then Judges of the High Court. The Applicant should know that I sit in the High Court and not the Court of Appeal. It is trite that I cannot entertain an application to extend time which jurisdiction only vested in the very court he intends to seek the remedy arising out of the dismissal order by this very forum. The application is dismissed for want of jurisdiction.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 23<sup>RD</sup> DAY OF MAY 2025**

.....

**R. NYAKUNDI**

**JUDGE**

