



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kurgat v Republic (Criminal Revision E315 of 2024)  
[2025] KEHC 8256 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8256 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E315 OF 2024  
RN NYAKUNDI, J  
JUNE 12, 2025**

**BETWEEN**

**SIMON KIPKOECH KURGAT ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

Representation:

M/s Sidi for the State

1. Before this court is an application dated 11<sup>th</sup> day of July 2024 seeking the following orders:
  - i. That this matter be certified as urgent and be heard at the first instance
  - ii. That the appellant will be seeking a declaration by the court that his appeal out of has merits and it qualifies to be heard
  - iii. That I pray to be present during hearing and determination of this matterWhich application is made in the following grounds;
  1. That I was charged for the offence of rape contrary to section 3 of the sexual act no. 3 of 2006 stealing contrary to section 268 (1) as read with section 278 (A) of the *Penal Code* and assault contrary to 251 of the penal code and escape and sentenced to 35 years imprisonment concurrently at Eldoret Magistrate court
  2. That the trial learned judge erred in law by convicting the appellant but failed to note that evidence of identification was not proved beyond reasonable doubts



3. That the trial learned judge erred in law by convicting and sentencing the appellant but failed to note that, the elements of the offence charged were never proved against the appellant to the required standards
4. That the trial learned judge erred in law by convicting and sentencing the appellant without adequately analyzing the appellant's defense
5. That the trial learned judge erred in law by convicting and sentencing the appellant without considering the fact that the entire evidence was marred with inconsistencies thus contravening section 165 of the *evidence act* cap 80 laws of Kenya against the appellant
6. That, I was not supplied with the copy of the original high court's proceedings and its judgement to enable me appeal on time but had intention to appeal
7. That due to my earlier intention to appeal, I beg leave this honorable court for an extension of time to appeal out of time
8. That I wish to be present during hearing and determination of this appeal out of time

### Decision

2. It is now well settled in various cases i.e. *Cleophas Wasike v Mucha Swala* [1984] eKLR and *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* – Civil Application No. NAI 255 of 1997

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are first the length of the delay secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly, the degree of prejudice to the respondent if the application is granted.”

Similarly, in the court of *Muringa Company Limited v Archdiocese of Nairobi Registered Trustees* [2020] eKLR the judge made the following observations

“Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of party who has a decision in his or her favor against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party's opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.”

3. The parameters of exercising this discretion to file an appeal out of time is as laid down in *Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 others* [2014] eKLR as follows
  1. “Extension of time is not a right of a part. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
  2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;



3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case basis;
  4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction;
  5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  6. Whether the application has been brought without undue delay; and
  7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
4. I have considered the application and the affidavit evidence and the principles elucidated above and I find sufficient cause to extend time for the applicant to file an appeal out of time. The Deputy Registrar to supply the applicant the typed record of the trial court within 30 days from today’s date. With this ruling the applicant shall proceed to file an appeal as provided in our rules and the memorandum of an appeal so annexed be deemed as duly filed.
5. It is ordered.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 12<sup>TH</sup> DAY OF JUNE 2025**

.....

**R. NYAKUNDI**  
**JUDGE**

