



**Omayya alias Oloo v Republic (Miscellaneous Criminal Application E084 of 2023) [2025] KEHC 7684 (KLR) (4 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 7684 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS CRIMINAL APPLICATION E084 OF 2023  
RN NYAKUNDI, J  
JUNE 4, 2025**

**BETWEEN**

**PHILIP OMA YA ALIAS OLOO ..... 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 October 2023 seeking the following orders:
  - i. That the applicant be granted leave to appeal out of time
  - ii. That may the honorable court be pleased to certify this application as extremely urgent and be dispensed at the first instance
  - iii. That the delay to file the appeal was not deliberate
  - iv. That my appeal has high chances of successIt is further state annexed by n affidavit sworn by Philip Omayya Alias Oloo which states as follows:
  - i. That I am male adult Kenyan citizen of sound of mind capable of swearing this affidavit
  - ii. That I know of my own knowledge that I was convicted and sentenced to life imprisonment for the offence of defilement contrary to section 8(1)(2) of the sexual offences act no. 3 of 2006
  - iii. That I know of my own knowledge that I was informed of my right to appeal within 14 days
  - iv. That I thought of my family would engage lawyer to prepare and file the appeal but failed due to financial constraints



- v. That I know of my own knowledge that I did not appeal within the stipulated time
- vi. That I now pray to be allowed to appeal out of time because my delay was not deliberate
- vii. That I have knowledge that my appeal has high chances of success
- viii. That I know of my own knowledge that I have deponed herein is true and correct to the best of my knowledge, understanding and belief

### **Determination**

- 2. I have perused through the application and consider the prayers as sought by the applicant. The primary issue for determination is whether the applicant has laid the basis upon which time to file an appeal can be extended
- 3. The threshold for the award of leave to appeal out of time was set out in the case of *Nicholas Kiptoo Salat v Independent Electoral and Boundaries Commission and 7 others* (2014) eKLR where the Supreme Court held that:
  - “ ... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.”
- 4. The supreme court in the said case develop various principles for court to consider when entertaining application such as one before court, the court stated:
  - 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 petitions, public interest should be a consideration for extending time.”
- 5. The applicant was charged and convicted for the offence of defilement contrary to section 8(1) (2) of the sexual offence Act and is facing a life sentence. This is a serious criminal offence in our justice system carrying with it the gravest of penalties. The finality and severity of a life sentence demands that every available legal remedy be exhausted to ensure that justice has been properly served. In cases of such magnitude, where an individual’s life hangs in the balance, the court must be vigilant in safeguarding the constitutional right to appeal.
- 6. I have carefully considered the application, and the supporting affidavit as filed by the applicant. I am of the considered view that the applicant has demonstrated sufficient grounds to warrant this



court's discretion to extend time for filing the appeal. The applicant has clearly explained that the delay was occasioned by financial constraints which in turn prevented the family from securing legal representation within the prescribed time limits. The applicant's explanation reveals circumstances beyond its immediate control. Given the gravity of the conviction carrying with it a life sentence and the fundamental right to appeal guaranteed under article 50 of *the constitution*, the interests of justice demand that the applicant be afforded the opportunity to challenge the conviction and sentence.

7. In the end, the following orders shall abide:

- a. Leave is here by granted to the applicant to file his appeal out of time within 21 days from the date of this ruling
- b. The appeal once properly filed shall be expeditiously heard and determined
- c. There are no orders as to cost
- d. The file is marked as closed

8. Orders accordingly

**DATED AND SIGNED AT ELDORET THIS 4TH DAY OF JUNE, 2025**

.....

**R. NYAKUNDI**

**JUDGE**

