



**Chelule v Republic (Miscellaneous Criminal Application
E032 of 2025) [2025] KEHC 10902 (KLR) (25 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10902 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E032 OF 2025
RN NYAKUNDI, J
JULY 25, 2025**

BETWEEN

SIMON EMAIDI CHELULE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

M/s Kirenge for the state

1. What is pending before me for determination is a Notice of Motion Application dated 11th March 2025 in which the Applicant is seeking the following orders;
 - a. Spent
 - b. That the Honourable Court be pleased to order that this appeal out of time be given priority in determination.
2. The Application is based on the following grounds among others:
 - a. That the Applicant herein is seeking to be allowed to file an appeal out of time in E055 of 2022 at Eldoret CMC in which the Applicant was charged for an offence of defilement contrary to section 8(1) as read with section 8(2) of the Sexual Offences Act No. 3 of 2006 and sentenced to 40 years' imprisonment.
 - b. That the Appellant is seeking an extension of time to appeal out of time to the high court.
 - c. That the appellant could not appeal on time because he was not supplied with the court proceedings and judgement on time to enable him appeal on time.



- d. That due to my earlier intention to appeal, I beg leave of this Honourable Court for an extension to appeal out of time.
3. The Application is supported by the annexed affidavit dated 11th March 2025 sworn by the Applicant who avers as follows;
 - a. That the Applicant herein is seeking to be allowed to file an appeal out of time in E055 of 2022 at Eldoret CMC's in which I was charged for an offence of defilement contrary to section 8(1) as read with 8(2) of the *Sexual Offences Act* No 3. Of 2006 and sentenced to 40 years' imprisonment.
 - b. That I, the Appellant is seeking an extension of time to appeal out of time to the high court.
 - c. That the Appellant could not appeal on time because he was not supplied with the court proceedings and judgement on time to enable him appeal on time.
 - d. That due to my earlier intention to appeal, I beg leave of this Honourable Court for an extension to appeal out of time.

Decision

4. I have considered the Notice of the supporting affidavit on record and the submissions of the parties. The main issue for determination is whether this court should allow the Applicant to file the Appeal out of time.
5. Section 349 of the *Criminal Procedure Code* on Limitation of time of appeal provides;

An appeal shall be entered within fourteen days of the date of the order or sentence appealed against:

Provided that the court to which the appeal is made may for good cause admit an appeal after the period of fourteen days has elapsed, and shall so admit an appeal if it is satisfied that the failure to enter the appeal within that period has been caused by the inability of the appellant or his advocate to obtain a copy of the judgment or order appealed against, and a copy of the record, within a reasonable time of applying to the court therefore.
6. The Supreme court in the case of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR stated as follows;

“Extension of time being a creature of equity, one can only enjoy it if he acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it.
7. The Supreme Court in the same case then set out the conditions for extension of time to file an appeal as follows;
 - a. 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;
 - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.



- c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis.
 - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court.
 - e. Whether there will be any prejudice suffered by the respondents if the extension is granted.
 - f. Whether the application has been brought without undue delay; and
 - g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
8. The Supreme Court of Kenya also pronounced itself in the question of extension of time in the case of Andrew Kiplagat Chemaringo Vs Paul Kipkorir Kibet [2018] eKLR and stated as follows:
- “The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favorably exercisable.”
9. I have considered the application and find the delay explained as having been caused by slow administrative action to supply the proceedings of the Magistrates Court in time for the filing of the appeal before expiry of time limited to do so. In the premises, I find merit in this application. Consequently, the applicant’s Notice of Motion dated 11th March 2025 is allowed in the following terms:
- a. I hereby allow the applicant’s Notice of Motion Application as filed in this Court’s registry.
 - b. The applicant shall file a Notice of Appeal within fourteen (14) days from date hereof.
 - c. The registry to prepare the Record of Appeal and file it and serve it on the applicant and the respondent within sixty (60) days hereof.
 - d. The registry shall thereafter place appeal before the Court for hearing.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 25TH JULY 2025

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R. NYAKUNDI

JUDGE

