



**Chelule v Republic (Criminal Miscellaneous Application
E032 of 2025) [2025] KEHC 9593 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9593 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E032 OF 2025**

RN NYAKUNDI, J

JULY 4, 2025

BETWEEN

SIMON EMAIDI CHELULE APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application dated 11th day of March 2025 seeking orders as follows:
 - a. Spent.
 - b. That may the honorable be pleased to order that, this appeal out of time be given priority in determination
 - c. That I pray to be present during the hearing of this matter
2. The application is based on grounds that:
 - a. The applicant herein is seeking to be allowed to file an appeal out of time in E055 of 2022 at Eldoret Magistrate Court PM's Court in which he was charged for an offence Defilement contrary to section 8(1) as read with section 8(2) of the sexual offences Act No 3 of 2006 and sentence to 40 years' imprisonment.
 - b. That the appellant could not appeal out of time because he was not supplied with the court proceedings and judgment on time to enable him appeal on time
 - c. That further grounds shall be adduced at the hearing of this appeal

Decision

3. The guiding principles are set out in the case of Salat v IEBC & 7 others [2014] KLR-SCK thus:



- a. Extension of time is not 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 ought to 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, which ought to be explained to the satisfaction of the court;
 - e. Whether there would be any prejudice suffered by the respondents if the extension was granted;
 - f. Whether the application had been brought without undue delay.
4. It is well settled that a right of appeal is constitutional as is provided in the *Constitution*. The right being constitutional therefore, it stands to override most other negative principles aimed at its fore closing. The rider also stands clear that the exercise of this right is only permissible within limit as provided by the law. In other words, the right is lost outside prescribed statutory period allowed but will only be exercisable by leave of court; hence the reason seeking an order for leave and extending the time within which to appeal. While the constitutional right cannot be extended if the applicant fails to adduce good and substantial reason for obliging the application, the court will not also hesitate to exercise its discretion in favour thereof provided sufficient materials and reason are contained in the affidavit to justify the exercise
5. With reference to the drawn affidavit and the reasons advanced in the applications, the reasons for the delay have been explained satisfactory. The decision whether or not to exercise discretion in favour of the applicant at this stage of the proceeding the merit of the appeal is not in issue rather the question is whether the proposed memorandum of appeal provides the basis of an arguable appeal. For those reasons leave to appeal is granted to the applicant.
6. It is so ordered.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 4TH DAY OF JULY 2025.

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R. NYAKUNDI

JUDGE

