



**Chirchir v Republic (Criminal Miscellaneous Application
E132 of 2024) [2025] KEHC 9645 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9645 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E132 OF 2024**

RN NYAKUNDI, J

JULY 4, 2025

BETWEEN

VINCENT CHIRCHIR APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court for determination is the applicant's application seeking orders as follows:
 - a. That the delay to file my appeal was not deliberate.
 - b. That, I now pray to be granted leave to appeal out of time
 - c. That my appeal has high chances of success
2. The application is supported by an affidavit sworn by the applicant in which he made the following averments:
 - a. That, I know of my own knowledge that I was convicted and sentenced to 10 years' imprisonment for the offence of attempt to strike with intent to harm contrary to section 23(b) of the penal code.
 - b. That I know of my own knowledge that I was informed of my right to appeal within 14 days.
 - c. That I know of my own knowledge that my sickness interfered with the delivery of my appeal to your docket.
 - d. That, I now pray to be allowed to appeal out of time because my delay was not deliberate.
 - e. That I have knowledge that my appeal has high chances of success.



- f. That I know of my own knowledge that all I have deponed herein is true to the best of my knowledge, information and belief

Decision

3. The applicant seeks leave for extension of time to file an appeal against the judgment of the Lower Court in which he was sentenced to 10 years' imprisonment for the offence of attempt to strike with intent to harm contrary to section 23(b) of the penal code. The timeline set by the criminal procedure code under section 349 is 14 days from the date of the delivery of judgment. The same code empowers the court to exercise discretion to extend time in favour of the applicant. The guiding principles are set out in the case of *Salat v IEBC & 7 others* [2014] KLR-SCK thus:
- i. 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;
 - 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 ought to 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, which ought to be explained to the satisfaction of the court;
 - v. Whether there would be any prejudice suffered by the respondents if the extension was granted;
 - vi. Whether the application had been brought without undue delay; and
 - vii. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.
4. In other words, the courts are conferred with discretionary powers to admit an appeal even after the prescribed period in the statute provided the intended appellant is able to establish sufficient cause for not filing within time. It is well settled in law that court should not adopt an injustice-oriented approach in dealing with the application for condonation of the delay in filing the appeals and that follows a pragmatic line to advance substantial justice under Article 159 (2) (d) of *the constitution*. In this case the exercise of discretion in favour of the applicant to file an appeal out of time. The memorandum of appeal be deemed as duly filed within time. The Deputy Registrar of the High Court shall cause the typed proceedings of the law court to be shared with the intended appellant on or before 28th of July 2025. The status conference be held on the said date to plan for the trial dates on the appeal.

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

R. NYAKUNDI

JUDGE

