



**Kosgei v Republic (Criminal Miscellaneous Application
E410 of 2024) [2025] KEHC 10198 (KLR) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10198 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E410 OF 2024**

RN NYAKUNDI, J

JULY 15, 2025

BETWEEN

CHARLES KIBIWOTT KOSGEI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. What is pending before this Court for determination is a Notice of Motion Application dated 12th day of July 2024 I which the Applicant is seeking the following orders:
 - a. That the applicant is seeking leave to be granted an opportunity to file an appeal out of time
 - b. That the applicant is seeking for any orders that it may deem fit to his current situation
 - c. That the petitioner is praying to be present during the determination of this petition.
2. The Application is supported by the annexed affidavit sworn by the Applicant who avers as follows:
 - a. That, I was charged with the offence of defilement c/section 8 (1) as read with 8(2) of the sexual offence act no.3 of 2006, was convicted and sentenced to serve 30 years sentence by CM's court at Eldoret on 12th June 2024
 - b. That, the applicant was aggrieved with the above decision and procured the help of an officer to help him write an appeal on his behalf.
 - c. That, the appeal write-up was not ready by the time of expiry date which was on 26th June 2024 on the reason that the officer was assigned other duties namely night shift duties (1 week) and thereafter as the in-charge of anti-riot squad that was dealing with demonstrators in Eldoret town.



- d. That, the officer took some break from anti-riot duties and I promptly submitted the same for filing at the para-legal office on the 11th July 2024. Unfortunately, I was informed that I was time barred and advised to write an application to request permission of the court to file the same.
- e. That, based on the above reason I am therefore writing this application to seek leave of the court to file my time barred appeal out of the stipulated time for consideration.
- f. That, I believe my appeal has a great chance of success and I know the end of justice for my case will be met when the court considers my appeal.
- g. That, I pray the court be pleased to allow me an opportunity to present my grievances by excusing my delay as this omission is not entirely my fault as the circumstances were beyond my control.
- h. That, what I have deponed herein is true to the best of my knowledge, information and belief.

Decision

- 3. The applicant is seeking leave of this court in terms of section 348 & 349 of the CPC to file his appeal out of time. The discretion of the court is unfettered save for the guidance provided by the Supreme Court in *Nicholas Kiptoo Arap Salat v IEBC and 7 Others* SCK App. No. 16 of 2014 [2014] eKLR held as follows:
 - a. A party who seeks for extension of time has the burden of laying basis to the satisfaction of the court
 - b. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis
 - c. Whether there is a reasonable reason for the delay. The delay be explained to the satisfaction of the court
 - d. Whether there will be any prejudice suffered by the respondents if the extension is granted
 - e. Whether the application has been brought without undue delay; and
 - f. Whether in certain cases, like election petitions, public interest should be a consideration for extending time
- 4. Going by the application and affidavit the applicant has surmounted the hurdle for this court to exercise discretion to enlarge time to file an appeal out of time. The memorandum of appeal be deemed as duly filed within time.

DATED SIGNED AND PUBLISHED VIA EMAIL AND CTS AT ELDORET ON THIS 15TH JULY 2025.

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R. NYAKUNDI
JUDGE

