



**Kirwa v Republic (Criminal Miscellaneous Application
E045 of 2025) [2025] KEHC 9390 (KLR) (1 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9390 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E045 OF 2025**

RN NYAKUNDI, J

JULY 1, 2025

BETWEEN

ZADDOCK KIPSANG KIRWA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application dated 25th day of February 2016 seeking the following orders
 - a. Service of this application be dispensed with in the first instance.
 - b. This application be certified as urgent and be fixed for hearing on priority basis
 - c. This Honorable court be pleased to grant leave to the Applicant to lodge an Appeal from conviction and sentencing of the chief magistrate in Moiben criminal case No E098 of 2025 out of time the same having been delivered by the trial court on 19th March 2025.
 - d. That there be stay of execution of the sentencing in Chief Magistrate in Moiben Criminal Case No E098 of 2025 pending hearing and determination of this application and of the intended appeal.
 - e. Such other orders be made as are just and expedient.
 - f. Costs be in the cause.
2. Which application is supported by the annexed affidavit of Nabei Kiprono Brian on the following grounds: -
 - i. That the Applicant is aggrieved by the conviction and sentencing of the Chief Magistrate in Moiben criminal case No E098 of 2025 delivered on 19th March 2025 wishes to appeal the same.



- ii. That the Applicant had requested for a typed copy of judgment which is yet to be availed to us.
- iii. That the Applicant was confused after the delivery of his judgment as he was not possessed with any knowledge on how and when to appeal against the judgement of the lower court.
- iv. That he was sickly while in remand and prays that the court reviews his sentence in the appeal
- v. That the Applicant has a good appeal which raises good legal issues against the Respondent and we have received instructions and drawn the requisite suit papers as laid out in the Memorandum of Appeal.
- vi. That there was a genuine mistake by the Applicant in filing appeal on time.
- vii. That the we consulted for further instructions in liaison with the Applicant herein which have resulted to the conclusion that the Applicant's Advocates seek leave to lodge an Appeal.
- viii. That the failure by the Applicant to file the appeal within time was not deliberate as Applicant and the Advocates had to engaged in consultations which were necessary to give way forward on the case after orders of sentencing was issued.
- ix. That presently the Applicant has started serving his term in Eldoret main prison.
- x. That the Applicant has a good Appeal from the said decision.
- xi. That this Application is made in good faith and has been lodged expeditiously.
- xii. That it is fair, just and expedient that this application be allowed.

Decision

3. The Applicant seeks leave of this court for extension of time filed an appeal out of time. The applicable law is Section 349 of the *Criminal Procedure Code*. It is not worthy to state that the filing of memorandum of Appeal is not premised on any condition to be fulfilled by the intended Appellant. What is significant is whether the Applicant has met the threshold for the court to exercise discretion to enlarge time to file and Appeal. The principles are well laid down in *Salat Independent Electoral & Boundaries Commission & 7 others* (2014) KLR-SCK in which the court observed:
 - 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 lying 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. Applicant has explained himself on the reasons for the delay and that his intended appeal has high chances of success. In my considered view, I find no sufficient cause that the state would be prejudiced by granting extension of time for the intended appellant to file his appeal out of time. In this respect the memorandum of appeal be deemed as properly filed and the Deputy Registrar do supply typed copy of proceedings to the Applicant to facilitate preparation of the record of Appeal.
5. It is so ordered.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 1ST DAY OF JULY 2025

R. NYAKUNDI

JUDGE

