



**Langat v Republic (Criminal Miscellaneous Application  
E150 of 2024) [2025] KEHC 9424 (KLR) (1 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9424 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL MISCELLANEOUS APPLICATION E150 OF 2024**

**RN NYAKUNDI, J**

**JULY 1, 2025**

**BETWEEN**

**SAMSON KIBET LANGAT ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. That the applicant is seeking leave to be granted an opportunity to file an appeal out of time
2. That the applicant is seeking for any orders that it may deem fit to his current situation
3. That the petitioner is praying to be present during the determination of this application

**Affidavit**

4. That I am a Kenyan citizen who is an adult male of sound mind hence competent to swear this affidavit
5. That I was charged with the offence of indecent act c/section 11(1) of the S.O.A no. 3 of 2006, I was convicted and sentenced to serve 10 years sentence by CM’s court at Eldoret on 2<sup>nd</sup> August 2024
6. That the applicant was aggrieved with the above decision but did not file his appeal on time following some misadvice by my fellow inmates that my sentence will be enhanced but I filed a miscellaneous application to seek for a reduction for the period spent in remand in application no. E094 of 2024 at Eldoret high court
7. That considering I have a wish and desire to appeal the above decision I am writing this application to seek for a time extension to file my appeal out of time as I believe my appeal has a great chance of success
8. That I pray the court be pleased to allow me an opportunity to present my submissions



## Decision

9. This application is seeking leave of this court to file an appeal out of time. Pursuant to Section 349 of the *Criminal Procedure Code* the timeline for an aggrieved party in a criminal process is expressly stated as follows: “Provided that the court to which the appeal is made may for good cause admit an appeal after the period of fourteen days have 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 in ability of appellant or his advocate to obtain a copy of the judgement or order appealed against and a copy of the record within a reasonable time applied to the court therefore.
10. The issues to be determined before hand before exercising discretion is as articulated by the court of Appeal in *Paul Wanjoi Mathenge* 2013 eKLR thus: “ The discretion under rule 4 is unfettered, but It has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors sated in previous decision of this court including, but not limited to, the p[eriod of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance. In *Henry Mukora Mwangi v Charles Gichina Mwangi*-Civil Application No Nai 26 of 2004, this court held: “ it has been stated time and again that in an application under rule 4 of the Rules the learned single judge is called upon to exercise his discretion which discretion is unfettered. It may be appropriate to re-emphasize this principles by referring to decision in *Mwangi b Kenya Airways ltd* (2003) KLR 486 in which this court stated “Over the years the court has of course set out guidelines on what a single judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance in *Le Sila Mutiso -vs- Rose Hellen Wangari Mwangi*-Civil Application No Nai 255 of 1997 (Unreported) the court expressed itself thus: “ it is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is will settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are, first the length of the delay, secondly the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted, and fourthly, the degree of prejudice to the respondent if the application is granted.
11. This is an equitable remedy which the court in *Sayers v Clarke Walker* (2002) EWCA Civ 645 at paragraph 22 the court observed as follows:

it follows that when considering whether to grant an extension of time for an appeal against a final decision in a case of complexity, the courts should consider “all the circumstances of the case” including

  - a. The interests of the administration of justice
  - b. Whether the application for relief has been made promptly
  - c. Whether the failure to comply was intentional
  - d. Whether there is a good explanation for the failure
  - e. The extent to which the party in default has complied with other rules, practice directions and court orders
  - f. Whether the failure to comply was caused by the party or his legal representative
  - g. The effect which failure to comply had on each party and



- h. The effect which the granting of relief would have on each party in the case of a procedural appeal the court would also have to consider item (g) “whether the trial date or the likely trial date can still be met if relief is granted.” (See also *Salat Independent Electoral & Boundaries Commission & Others* (2014) KLR- SCK)

12. I have taken into account the affidavit evidence and I hereby give the following orders:

- a. That the Applicant be granted leave to file an appeal out of time.
- b. That the Registrar of the High Court to supply him with the typed record of proceedings under Article 50 (5) (B) of the *constitution* within 30 days from today’s ruling.
- c. That the draft memorandum of appeal be deemed as duly filed within time as provided for under Section 349 of the CPC.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 1<sup>ST</sup> JULY 2025.**

**R. NYAKUNDI**

**JUDGE**

