



**Too v Republic (Criminal Miscellaneous Application E097 of 2023)
[2024] KEHC 890 (KLR) (7 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 890 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E097 OF 2023
RN NYAKUNDI, J
FEBRUARY 7, 2024**

BETWEEN

HILARY KIPLIMO TOO APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application to appeal for leave for extension
of time from the judgment in CR. No. 46 of 2018)*

RULING

1. The applicant has moved to the court to consider an application to appeal out of time not at pursue a remedy under section 33 (2) of the [CPC](#). The discretion under section 349 of the [CPC](#) empowers the court with unfettered discretion to be exercised judiciously in favour to the applicant. In this respect the supreme court in [Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others](#) (2014) eKLR laid down the principles that govern the exercise of discretion in applications for extension of time as follows;
 1. 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.
 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made as a case to case basis.
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court.
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted.



6. Whether the application has been brought without undue delay and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
2. First as a matter of logic on the outer end of the spectrum one has to look at the prospect of success on appeal. On the other end of the spectrum would be the nature of the delay, the length of it and the reasons why the appeal was not filed within the prescribed period. It is against this background I appraise the record of appeal and it is clear the threshold for granting leave to appeal has been met by the applicant. For those reasons the applicant has leave necessary to file his appeal forthwith.

DATED SIGNED AND DELIVERED THIS 7TH FEBRUARY, 2024

In the presence of:

Applicant present

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R. NYAKUNDI

JUDGE

