



**Luvai v Republic (Miscellaneous Criminal Case 100 of 2018)  
[2025] KEHC 13529 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13529 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS CRIMINAL CASE 100 OF 2018  
RN NYAKUNDI, J  
SEPTEMBER 29, 2025**

**BETWEEN**

**LEONARD AMBAGWA LUVAI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. What is pending before this Court for determination are Chamber Summons undated seeking the following orders:
  - a. That this matter be certified as urgent and be heard at the first instance.
  - b. That may the honorable Court be pleased to order that, the same be given priority in hearing and determination.
  - c. That may the court be pleased and allow my appeal filed out of time, annexed in the supporting affidavit by the names Leonard Ambagwa Luvai.
  - d. That due to my earlier intention to appeal, I beg leave of this honorable court for an extension time to Leonard Ambagwa Luvai.
  - e. That the appellant prays to be present during the hearing of this application/appeal
  - f. That other grounds may be adduced during the hearing hereof.
2. The Application is supported by an affidavit sworn by Leonard Ambagwa Luvai which states as follows:
  - a. That I was charged with the offence of defilement contrary to Section 8(1) as read with 8(3) of the *Sexual Offences Act* and sentenced to 40 years imprisonment by Eldoret Law Court on 28<sup>th</sup> May 2018 by Hon. Odhiambo.



- b. That I could not appeal on time because I relied on my relatives who promised to hire a lawyer for me but court not do so due to financial constraints.
- c. That due to my earlier intention to appeal, I beg leave of this honorable court of an extension time to Leonard Ambagwa Luvai.

## Decision

- 3. The Applicant is aggrieved with the decision of the trial Court as against the conviction and sentence of 40 years imprisonment. From the affidavit he had a window of 14 days to file an appeal to the High Court but given the averments in support of the application it appears he was caught up with the fixation of time. He now applies to this court to enlarge time under Section 348 of the *Criminal Procedure Code*.
- 4. First and foremost, this being an application for leave for one to file an appeal it's a threshold issue which has since been settled in law and I find the import of such matters in the realm of civil law significant and fundamental as a guide to invoke the judicial discretion to decline or grant extension of time. The Court of Appeal has pronounced itself on this aspect severally. Recently, in *Paul Wanjohi Mathenge v Duncan Gichane Mathenge* [2013] eKLR the Court of Appeal while referring to other authorities observed (at paragraph 12):

“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 stated in previous decisions of this Court including, but not limited to, the period 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 principle by referring to the decision in *Mwangi v 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 *Leo 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 also well 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.

- 5. For the Applicant to persuade the court to grant the relief on extension of time which is within the letter and the spirit of Sections 348(A) as read with 349 of the *Criminal Procedure Code* must navigate the sufficient cause terrain bearing in mind the following principles:



- a. That the application has been made promptly.
- b. It must be supported by evidence on affidavit which avers that the failure to comply with the timelines of 14 days was not intentional and a proper explanation for that failure to file an appeal is well documented in evidence.

It is from the strength of these judicial discretion can be exercised for the interest of administration of justice and that the delay in filing an appeal was not intentional and there is no prejudice as against the respondent in the court granting the remedy of extending time.

6. It is now settled law in the case of *Salat v Independent Electoral & Boundaries Commission & 7 Others* [2014] KLR-SCK in which the Court held as follows in exercising the discretion to extend time for filing an appeal:

- a. 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;
- b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- c. Whether the court ought to exercise the discretion to extend time, is a consideration to be made on a case to case basis;
- d. Whether there is a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;
- e. Whether there would be any prejudice suffered by the respondents if the extension was granted;
- f. Whether the application had been brought without undue delay; and;
- g. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.

7. Upon reviewing the affidavit evidence and given the fact that the Applicant was unrepresented by legal Counsel as provided under Article 50 (2) (g) (h) of the *Constitution*, there is a likelihood that the period set by the *Code* to file the appeal must have bypassed him without notice. The learned Author Charles Mwaura Kamau in his book Principles of Constitutional Law [2014] pg 148, Law Africa made the following observations on the right to legal representation:

“The right to legal representation is universally acknowledged as a fundamental right. Trials in many jurisdictions are considered unfair and fatally irregular if the presiding judge or magistrate fails to inform the accused person his or her right to be assisted by a counsel; if he or she denies the accused his right to appoint a counsel of his or her choosing; if he or she fails to facilitate the effective and full participation of a counsel or if he or she does anything that would impede the counsel of the performance of his duty. The right to legal representation is almost axiomatic in an adversarial system. Under the adversarial system, court proceedings are left between the two parties to fight it out. The Bench serves as the umpire and intervenes only to enforce compliance with the rules and ensure fairness of the proceedings. Where it is applied in criminal matters, the adversarial system may result in an incalculable prejudice to the accused person whose liberty or life may be at stake. It is for this reason that accused persons are accorded the right to appoint legal representation of their own choosing. Strongly related to the adversarial system, is the principle of equality of arms



which is an essential feature of a fair trial. Equality of arms is an expression of the balance that must exist between the prosecution and the defence.

8. For those reasons, the application for extension of time is allowed. The Deputy Registrar shall move with speed to supply the typed proceedings upon the Applicant to lodge his appeal. For purposes of this miscellaneous file, the same is closed.

**DATED, SIGNED AND DELIVERED VIA EMAIL AND CTS AT ELDORET THIS 29<sup>TH</sup> SEPTEMBER 2025**

.....

**R. NYAKUNDI**

**JUDGE**

