



**Gichue v Republic (Criminal Application E055 of 2025)
[2025] KECA 1892 (KLR) (11 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1892 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E055 OF 2025
JM MATIVO, JA
NOVEMBER 11, 2025**

BETWEEN

BENSON MUCHIRI GICHUE APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for extension of time to appeal against the judgment of the High Court of Kenya at Nakuru (H. K. Chemitei, J.) delivered by H. Ong'udi, J. on 22nd January 2025 in CR Case No. 31 of 2019)

RULING

1. The applicant, Benson Muchiri Gichue was convicted for the offence of murder contrary to section 203 as read with section 204 of the Penal Code in Nakuru HCCR No 31 of 2019 on 22nd January 2025. He was sentenced to 18 years imprisonment. The applicant failed to lodge his notice of appeal within the statutory-stipulated time of 14 days. By an application dated 23rd May 2025, the applicant seeks for extension of time to appeal against the conviction and sentence on grounds that all along, he was under the impression that his petition of appeal had been filed, since he had delivered through the in-charge Nakuru Prisons. However, upon perusal of the Court file, by his advocate in May 2025, it was established that no appeal had been filed.
2. In response to the application vide written submissions dated 3rd November 2025, Mr. Omutelema Senior Assistant Director of Public Prosecution has amiably conceded to the leave application pointing to the lengthy sentence of life imprisonment.
3. Rule 4 of the Court of Appeal Rules gives the Court unfettered discretion to extend the time limited by the Rules, or by any decision of the Court or of a Superior Court, for the doing of any act authorized or required by the Rules, whether before or after the doing of the act on such terms as it thinks just.



The Supreme Court in Nicholas Kiptoo Arap Korir Salat vs. IEBC and 7 Others [2015] eKLR the Court stated:

“It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.”

4. I have considered the reasons advanced by the applicant. I have also considered the draft notice of appeal and the draft memorandum of appeal. Although the application is not opposed, the applicant must satisfy the principles that have been laid down in Nicholas Kiptoo Arap Korir Salat vs. IEBC and 7 Others [supra]. Having considered the explanation, I note that there has been a delay of almost three months in bringing the instant application. I find that the delay is not inordinate. I am also satisfied by the reasons advanced by the applicant for his failure to lodge the appeal in time. In the circumstances, I'm inclined to exercise my discretion in the applicant's favour. Accordingly, the application dated 23rd May 2025 is hereby allowed. The applicant shall file his appeal within 45 days from the date of this ruling.

Orders accordingly.

DATED AND DELIVERED AT NAKURU THIS 11TH DAY OF NOVEMBER 2025

J. MATIVO

..... **JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed.

Deputy Registrar.

