

**IN THE COURT OF APPEAL
AT NAKURU**

(CORAM: MATIVO, JA - IN CHAMBERS)

CRIMINAL APPLICATION NO. NAK E053 OF

2025 BETWEEN

JACKSON CHERUIYOT KIRUI.....APPLICANT

AND

REPUBLIC.....RESPONDENT

(Being an application for extension of time to file a notice of appeal against the judgment of the High Court of Kenya at Narok (F. Gikonyo, J.) dated 14th May, 2024

in

CRA No. E011 of 2022).

RULING

1. The applicant, Jackson Cheruiyot Kirui was convicted for the offence of defilement contrary to section 8 (1) as read with 8 (2) of the sexual offences Act in Narok CMCCR Case Number SO 48 of 2019 and sentenced to life imprisonment. His appeal to the High Court being CRA No. E011 of 2022 was partially successful to the extent that his conviction was upheld but the sentence of life imprisonment was set aside and substituted with a sentence of 30 years imprisonment. Although aggrieved, he failed to lodge his

notice of appeal within the statutory- stipulated period of 14 days. In his application before the

Court dated 14th April 2025 the subject of this ruling, he seeks extension of time to file his appeal on grounds that he was not supplied with the High Court proceedings and judgment on time.

2. In his written submissions dated 3rd November 2025, Mr. Omutelema Senior Assistant Director of Public Prosecution opposed the application for reasons that the delay has not been explained and that the applicant is currently serving an illegal sentence of 30 years instead of the mandatory life imprisonment that he deserves.
3. Rule 4 of the Court of Appeal Rules, 2022 grants this 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 stated that:

“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 as set out in the motion and the supporting affidavit. 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]. The order sought entails exercise of judicial discretion which must be exercised judicially. Therefore, there must be some grounds for its exercise, for a discretion exercised on no grounds cannot be judicial. If however there any grounds, the question of whether the grounds are sufficient is entirely for this Court to determine. "Any grounds" mean any reasons on the basis upon which a reasonable tribunal could come to the conclusion arrived at.

5. The applicant's explanation is that he was not furnished with the record on time. This explanation is unconvincing because the applicant has not demonstrated that he indeed requested for the record and his request was ignored and/or declined. Therefore, I find that the delay of almost 11 months in bringing this application is not inordinate bearing in mind that the applicant is serving a 30 years

sentence. In the circumstances, I'm inclined to exercise my discretion in the applicant's favour.

Accordingly, the application dated 14th April 2025 is hereby allowed. The applicant shall file his appeal within 45 days from the date of this ruling.

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.

