



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nkayiaka v Republic (Criminal Application E042 of 2025)  
[2025] KECA 1850 (KLR) (10 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1850 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E042 OF 2025  
JM MATIVO, JA  
NOVEMBER 10, 2025**

**BETWEEN**

**NKUYATTA OLE NKAYIAKA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for extension of time to appeal out of time against the judgment of the High Court of Kenya at Narok (Bwononga, J.) dated 26th November, 2019 in CRA No. 15 of 2016)*

**RULING**

1. The applicant, Nkuyatta Ole Nkayiaka was charged jointly with others before the Chief Magistrate's Court at Narok with two counts of robbery with violence contrary to section 296(2) of the Penal Code. A trial ensued and the applicant and his co-accused persons were all convicted for the offence of robbery with violence. Their appeal being Narok CRA No. 15 of 2016 against their conviction was unsuccessful and the sentence was reduced to 15 years imprisonment for each. Although aggrieved, he failed to lodge his notice of appeal within the statutory-stipulated period of 14 days. In his application dated 28<sup>th</sup> March 2025, he seeks extension of time to appeal to this Court contending that a copy of Judgment of the High Court was never supplied to him and efforts by his family to hire an advocate for him did not materialize.
2. This application is not opposed since, as at the time of writing this ruling on 10<sup>th</sup> November 2025 at 0900HRS, the respondent was yet to comply with the Court's case management directions issued on



29<sup>th</sup> October 2025 and the hearing notice sent on 28<sup>th</sup> October, 2025 at 1330HRS reminding parties to file their written submissions within 24 hours. Rule 58 (2) of the Court of Appeal Rules stipulates:

“(2) If the applicant appears or complies and the respondent fails to appear or comply, the application shall proceed in the absence of the respondent, unless the Court sees fit to adjourn the hearing...”

3. Rule 4 of the Court of Appeal Rules gives the Court unfettered discretion to extend the time limited by these Rules, or by any decision of the Court or of a Superior Court, for the doing of any act authorized or required by these 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 state:

“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.

Although the application is not opposed, the applicant must still satisfy the principles that have been laid down in *Nicholas Kiptoo Arap Korir Salat vs. IEBC and 7 Others* [supra]. The explanation by the applicant is that he was not furnished with a copy of judgment is not plausible since the applicant has not demonstrated that he indeed asked for the copy of judgment and his request was ignored and/or declined. Regarding the failure by the applicant’s family to instruct counsel to defend him, I note that, even before the High Court, the applicant was never represented by counsel and he was still able to represent himself adequately. The delay of nearly four years is inordinate and it has not been explained to my satisfaction. Accordingly, I dismiss the notice of motion dated 28<sup>th</sup> March 2025.

**DATED AND DELIVERED AT NAKURU THIS 10<sup>TH</sup> DAY OF NOVEMBER 2025**

**J. MATIVO**

.....

**JUDGE OF APPEAL**

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

Signed.

**DEPUTY REGISTRAR.**

