



REPUBLIC OF KENYA



KENYA LAW
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**Ng'etich v Republic (Criminal Application E056 of 2025)
[2025] KECA 1886 (KLR) (11 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1886 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E056 OF 2025
JM MATIVO, JA
NOVEMBER 11, 2025**

BETWEEN

LEONARD KIPKEMOI NG'ETICH APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for extension of time to file an appeal against the judgment of the High Court of Kenya at Bomet (R. Korir, J.) dated 30th September 2021 in CRA No. 26 of 2019)

RULING

1. The applicant, Leonard Kipkemoi Ng'etich was convicted for the offence of defilement contrary to section 8 (1) as read with 8 (2) of the [Sexual Offences Act](#) and sentenced to life imprisonment at the Resident Magistrate's Court at Bomet. His appeal being Bomet HCCR Appeal No. 26 of 2019 was dismissed on 30th September 2021. The applicant did not lodge his notice of appeal within the statutory-stipulated period of 14 days. He is now before this Court seeking extension of time to lodge his appeal to this Court. In his undated application, he maintains he was not supplied with the judgment on time. The foregoing notwithstanding, he lodged a timeous appeal but he has never been summoned to attend Court nor was he given an appeal number. Also, he claims that he previously lodged an application for extension of time via the Court's email but he never received any communication from the Court. Therefore, he seeks extension of time to file his appeal.
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 this 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 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 urged by the applicant. Granted, the application is not opposed. However, the applicant must satisfy the principles laid down in *Nicholas Kiptoo Arap Korir Salat vs. IEBC and 7 Others* [supra]. The applicant’s grounds are two, namely, he was not provided with the proceedings and judgment. That notwithstanding, he lodged a timeous appeal, but he was not provided with an appeal number. Two, he filed an application for extension of time which was forwarded to the court via e-mail, but he was never served with a notice to attend court.
5. The applicant claims that he was not supplied with the judgment on time and that he previously filed an application seeking extension of time which was not acted upon. To my mind, these two allegations were not supported by solid evidence. A letter to the registry or a copy of the alleged e-mail could have shed light on these allegations. Therefore, the inordinate delay of almost four years has not been satisfactorily explained. I am cognizant of the fact that the prayer sought is discretionary. Judicial discretion refers to a judge’s power to make a decision based on their individualized evaluation, guided by the principles of law. According to *Black’s Law Dictionary* Judicial discretion can be defined as, “The exercise of judgment by a judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a court’s power to act or not act when a litigant is not entitled to demand the act as a matter of right.” Decisions made under this power have to be sound and not arbitrary, meaning that such decisions have to be based on what is right and equitable under the circumstances. This wide discretion is to be exercised judicially and not capriciously. I note that the applicant is serving a life sentence and this could be his last chance to exercise his right of appeal. Therefore, it is only fair and just in the circumstances that I open the door for him to exercise his right to appeal to this Court. Accordingly, his undated application 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

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR.

