

**IN THE COURT OF APPEAL
AT NAKURU**

CORAM: MATIVO, JA (IN CHAMBERS)

CRIMINAL APPLICATION NO. NAK. E085 OF

2024 BETWEEN

**ELIJAH CHEPKWONY KIBET.....APPLICANT
AND**

REPUBLIC.....RESPONDENT

(Being an application for extension to appeal out of time from the conviction and sentence of the High Court of Kenya at Kericho (M. Ngugi, J.) dated 23rd November 2018

in

Criminal Case No. 26 of 2013).

RULING

1. The application before the Court is dated 25th November 2025.

The applicant seeks extension of time to appeal out of time against the conviction and sentence in Kericho HCCRA No. 26 of 2013.

2. The applicant, Elijah Chepkwony Kibet was charged before the High Court in Kericho with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. A trial ensued and after a full trial, the applicant was convicted and sentenced to life imprisonment. Although aggrieved, the applicant failed to

lodge his notice of appeal within the statutory-stipulated time of 14 days.

3. The applicant in his undated supporting affidavit dated 19th May 2025 contends that he sent his notice of appeal within the required time but he never received any feedback and that the efforts by his family to get him an advocate in vain also led to the late filing of the instant application.
4. The application is not opposed by the respondent.
5. 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. I shall adopt the findings of the Supreme Court in **Nicholas**

Kiptoo Arap Korir Salat vs. IEBC and 7 Others [2015]

eKLR the Court ruled 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.”

6. I have considered the reasons advanced by the applicant as set out in the motion, the supporting affidavit. It is noteworthy that there has been a delay of almost six years

on the part of the applicant. The explanation proffered by the applicant is not

plausible since murder convicts are entitled to free legal representation and there is no proof that indeed the applicant actually forwarded to the registry a notice of appeal within 14 days. Consequently, the delay of almost 6 years is inordinate. However, it is not lost to me that the applicant is currently serving a life sentence and it is only just and fair in the circumstances, to allow the applicant to exercise his right of second appeal to this Court, which may probably be his last chance under our judicial hierarchy, hence the need to afford him this last chance instead of closing the doors of justice for him. Accordingly, in exercise of my discretion, the application dated 25th November 2025 is hereby allowed. The applicant shall file his notice of appeal if not yet filed within 14 days and the record of appeal within 60 days from the date of this ruling. Orders accordingly.

Dated and delivered at Nakuru this 12th day of February, 2026.

J. MATIVO

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

*I certify that this is
a true copy of the*

original.
Signed.

DEPUTY REGISTRAR