



**Simiyu v Republic (Criminal Application E004 of 2024)
[2026] KECA 389 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KECA 389 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CRIMINAL APPLICATION E004 OF 2024
JM MATIVO, JA
MARCH 5, 2026**

BETWEEN

JOHN SIMIYU 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 Eldoret (J. M. K.
Ibrahim & P. M. Mwilu, JJ.) dated 16th April 2009 in CRA No. 33 of 2005)*

RULING

1. John Simiyu (the applicant) was convicted for the offence of robbery with violence and sentenced to suffer death in Eldoret Chief Magistrates' Criminal Case No. 3143 of 2002. His appeal to the High Court against both conviction and sentence being Eldoret High Court Criminal Appeal No. 33 of 2005 was dismissed on 6th day of April 2009. He failed to lodge his notice of appeal and memorandum of appeal against the said decision within the statutory provided period. By an application dated 8th April 2024, the subject of that meeting, he seeks extension of time to appeal out of time against the High Court decision. He claims the delay in filing his appeal was occasioned by failure by the court to supply him with the proceedings and judgment. He maintains that his appeal has high chances of success.
2. In his submissions dated 3rd March 2026, the respondent has conceded to the application urging this Court to find that the reason offered for the delay is reasonable.
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 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 v IEBC & 7 Others* [2015] eKLR 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 reason advanced by the applicant for the delay. The High Court judgment was delivered on 6th April 2009. The application before me is dated 8th April 2024. Regrettably, it has been pending before this Court for almost two years. That notwithstanding, it was filed in Court after a delay of 15 years. No letter has been annexed to the affidavit to demonstrate whether the applicant ever requested for the proceedings and judgment. I find that the delay of over 15 years is inordinate. In the circumstances, I am not persuaded that this is a proper case for me to exercise my discretion in the applicant’s favour. Accordingly, I dismiss the application dated 8th April 2024

DATED AND DELIVERED AT ELDORET THIS 5TH DAY OF MARCH, 2026.

J. MATIVO

JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR.

