



**Ngatia v Republic (Miscellaneous Criminal Application
E048 of 2025) [2026] KEHC 1146 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 1146 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CRIMINAL APPLICATION E048 OF 2025
FN MUCHEMI, J
JANUARY 29, 2026**

BETWEEN

CLEMENT WAMUIRU NGATIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. The application for determination dated 19th March 2025 seeks for leave to file an appeal out of time as a pauper.
2. The applicant states that he is currently serving 15 years imprisonment term after being convicted in Gatundu CM Criminal Case No. 256 of 2020 on 29th September 2022 with the offence of robbery with violence contrary to Section 296(2) of the Penal Code. The applicant further states that he delayed in filing his appeal because his family promised to hire an advocate for him which they failed to do. He states that he was assisted by the prisons authorities to prepare and file his application.
3. In opposition to the application, the respondent filed grounds of opposition dated 1st August 2025 and states that the judgment against the applicant was delivered on 29th September 2022 yet the applicant has filed an application for extension in the year 2025, which is two years and six months after the judgment.
4. The respondent argues that the applicant has not disclosed any good cause to warrant this court to allow the application. Further, the applicant has not accounted for or explained the delay in lodging an appeal against the trial court's decision.
5. It is further agreed that the applicant has not annexed a petition for appeal which clearly demonstrates that the intended appeal is devoid of any arguable issue.



6. The respondent argues that the extension of time is not a right of a party but is an equitable remedy that is only available to a deserving party at the discretion of the court. Further it is argued that a party who seeks extension of time has the burden of laying a basis for delay to the satisfaction of the court, which the applicant has failed to do. The respondent argues that there are no sufficient reasons for the delay to warrant this court to exercise its discretion in favour of the applicant.
7. Parties disposed of the application by way of written submissions. The applicant filed submissions on the substantive appeal and not on the instant application.

The Respondent's Submissions

8. The respondent reiterates what she deponed in her affidavit and submits that the applicant has not annexed any proof to show his efforts in procuring the proceedings for the judgment delivered. The applicant has not disclosed any good cause to warrant the court to allow the instant application for leave to lodge an appeal out of time.
9. The respondent relies on the case of *Nicholas Kiptoo arap Korir Salat vs IEBC & 7 Others* (2014) eKLR and submits that the applicant has not accounted for or explained the delay of almost three (3) years in lodging an appeal against the judgment of the court below. The applicant has not sufficiently made out a prima facie case or sufficient cause on the merits to warrant grant of any of the prayers sought in the application. The respondent further submits that the applicant did not annex a copy of the request for certified copies of the proceedings or judgment. Additionally, the applicant has not annexed a draft petition of appeal for consideration as to whether he has an arguable appeal.

The Law

Whether the applicant has made out a case for the grant of an order for leave to file his appeal out of time.

10. The court's power to extend time for filing an appeal is provided for under Section 349 of the *Criminal Procedure Code* as follows:-

An appeal shall be entered within fourteen days of the date of the order or sentence appealed against.

Provided that the court to which the appeal is made may for good cause admit an appeal after the period of fourteen days has lapsed, and shall so admit an appeal if it is satisfied that the failure to enter the appeal within that period has been caused by the inability of the appellant or his advocate to obtain a copy of the judgment or order appealed against, and a copy of the record, within a reasonable time of applying to the court therefor.

11. The Supreme Court in the case of *Nicholas Kiptoo Korir arap Salat vs IEBC and 7 Others* [2014] eKLR enunciated the principles applicable in an application for leave to appeal out of time. The court stated inter alia that:-

“The underlying principles a court should consider in exercise of such discretion should include:-

- a. Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;



- b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 - c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case by case basis;
 - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
 - e. Whether there will be any prejudice suffered by the respondent if the extension is granted;
 - f. Whether the application has been brought without undue delay.
12. The applicant was charged and convicted of the offence of robbery with violence contrary to Section 296(2) of the *Penal Code* and was sentenced to 15 years imprisonment. Judgment was delivered on 29th September 2022. This application was filed on 19th March 2025 which was about 2½ years after the judgment was delivered. The applicant attributes the delay in filing his appeal to financial constraints. Notably, criminal appeals are normally filed and proceedings provided at no cost. For the last ten (10) years, prisons have had legal aid Non-Government organizations (NGO's) personnel who give legal assistance to prisoners in relation to court matters. As such, the claim of financial constraints by the applicant does not make sense at this time and age.
13. I have also considered the draft petition of appeal annexed to the application and noted that the intended appeal does not raise any arguable grounds of appeal. The record is clear that the applicant never requested for a copy of certified copies of the proceedings and judgment at any one time for the last two and half years. This conduct rules out any intention or attempt to lodge an appeal on the part of the applicant. In my view, the delay of two and half years is inordinate and inexcusable.
14. The offence of robbery with violence carried a maximum sentence of death making it evident that the applicant was given a very lenient sentence.
15. Accordingly, the applicant has not provided sufficient reasons for the delay for this court to exercise discretion in his favour. The application dated 19th March 2025 lacks merit and is hereby dismissed with no orders as to costs.
16. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 29TH DAY OF JANUARY 2026.

**F. MUCHEMI
JUDGE**

