



**Bargoiyet v Republic (Miscellaneous Criminal Application
E026 of 2026) [2026] KEHC 3419 (KLR) (16 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3419 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E026 OF 2026
RN NYAKUNDI, J
MARCH 16, 2026**

BETWEEN

DAVID KIPTOO BARGOIYET APPELLANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

M/s Sidi Kirenge for the State

1. Before this court is an application by the applicant who seeks the following orders: -
 - a. Spent.
 - b. That may the honorable court be pleased to order that, the same be given priority in hearing and determination.
 - c. That may the court be pleased and allow my appeal filed out of time; that due to my earlier intention to appeal I beg leave if this honorable court for an extension of time to David Kiptoo Bargoiyet.
 - d. That the appellant prays to be present during the hearing and determination of this application.
2. In support of the application is the annexed affidavit of one David Kiptoo Bargoiyet who deponed as follows:
 - a. That I am a male Kenyan adult of sound mind and the appellant herein and as such conversant with the facts of the case and therefor competent to swear this affidavit.



- b. That I was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the Sexual Offences Act and sentenced to 20 years' imprisonment by the CM's Court at Eldoret in Cr. Case No. E029 of 2025 in a judgment delivered by the Hon. V. Karanja.
- c. That I would not appeal on time because I relied on my relatives who promised to hire a lawyer for me but could not do due to financial constraints.
- d. That due to my earlier intention to appeal, I beg leave of this honorable court for extension of time to David Kiptoo Bargoiyet.
- e. That I wish to be present at the hearing of this appeal.

Decision

3. This applicant is aggrieved with the decision of the lower court in Criminal Case No. E029 of 2025. It is not in dispute that in criminal cases the time laid down by the legislature is 14 days, however there is discretion for the court to extend time so that the memorandum of appeal can be admitted for hearing. The general test which the court applies in deciding whether or not to grant leave is this; leave will normally be granted unless the grounds of appeal have no realistic prospects of success. The court of appeal may also grant leave if the question is one of the general principle, decided for the first time or a question of importance upon which further argument and decision of the court of appeal would be to the public advantage.
4. The applicant contends that he could not appeal on time because the relatives promised that he will be getting a lawyer who would file an appeal on his behalf. Therefore, in the cause of engaging a lawyer the, 14 days' time provided in the law had already expired necessitating this appeal to file an appeal out of time. There is implicit in the law under the Criminal Procedure Code and the Constitution particularly in Article 48 & 50, the court has been clothed with wide discretion powers to extend time for doing anything or taking any steps as per law established. Essentially in any written law, where a time is prescribed for doing any act or taking any proceeding and power is given to a court or other authority to extend such time, then, unless a contrary intention appears, such power may be exercised by the court or other authority although the application of the same is not made until after the expiration of the time prescribed.
5. What this means under Sections 348 and 349(a) of the Criminal Procedure Code is that the court may for sufficient reason extend time for making an application including an application for leave to appeal or for bringing an appeal. The intention of the legislature has been interpreted in the various authorities and the parameters as laid down guidelines by the court of appeal in Paul Wanjohi Mathenge Vs Duncan Gichane Mathenge [2013] eKLR the Court of Appeal observed that: -

“The discretion under rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance. In Henry Mukora Mwangi v Charles Gichina Mwangi-Civil Application No. Nai 26 of 2004, this Court held;

“It has been stated time and again that in an application under rule 4 of the Rules the learned single Judge is called upon to exercise his discretion which discretion is unfettered. It may be appropriate to re-emphasize this principle by referring to the decision in Mwangi v Kenya Airways Ltd [2003] KLR 486 in which this court stated: -“Over the years, the Court has,



of course set out guidelines on what a single Judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance, in *Leo Sila Mutiso -vs-Rose Hellen Wangari Mwangi-Civil Application No Nai. 255 of 1997* (unreported), the Court expressed itself thus: -

"It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.

6. The principle that the court has a wide discretion to grant an extension of time to appeal when the applicant has good prospects of succeeding on appeal, even though he or she is guilty of inordinate delay without a good explanation, is firmly a part of the law and practice in Kenya and I would apply it in this case. The applicant has good prospects of succeeding on the appeal and the respondent will not suffer substantial prejudice if the time for applying for permission to appeal is extended. I would therefore allow this appeal with the usual costs consequences. It is so ordered.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 16TH DAY OF MARCH 2026

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R. NYAKUNDI

JUDGE

