

**IN THE COURT OF  
APPEAL AT NAIROBI**

**(CORAM: NJUGUNA, J.A. - IN CHAMBERS)**

**CRIMINAL APPLICATION NO. E045 OF**

**2025 BETWEEN**

**NIMOH IBRAHIM MOHAMUD.....APPLICANT**

**AND**

**REPUBLIC.....RESPONDENT**

*(An application for extension of time to lodge an appeal from the judgment of the High Court of Kenya at Garissa (Kariuki, J.) dated 5<sup>th</sup> February, 2020*

*in*

***HCCRA No. 14 of 2015)***

**\*\*\*\*\***

**R U L I N G**

1. The application before me is dated 16<sup>th</sup> May 2025. The main prayer is for leave to appeal out of time against the judgment issued in HCCRA No. 14 of 2015.
2. The applicant, **Nimoh Ibrahim Mohamud**, was arraigned before the High Court in Criminal Case No. 14 of 2015 at Garissa and charged with the offence of murder contrary to **section 203** as read with **section 204** of the **Penal Code**. She was convicted and sentenced to serve 15 years imprisonment on 5<sup>th</sup> February 2020.

3. Although aggrieved, she failed to lodge her notice of appeal within the statutory-stipulated time of 14 days. The applicant contends that she was not able to appeal on time because she was in custody serving her sentence, and her family had promised to hire legal representation for her, but they were unable to do so due to financial difficulties. Therefore, she could not appeal on time. Her present application invokes **rule 4** of the **Court of Appeal Rules** to enlarge the time to file her appeal.
4. From the application and the supporting affidavit sworn on 16<sup>th</sup> May 2025, it is evident that there has been a delay of approximately 5 years and 5 months in filing her notice of appeal against the judgment of the High Court.
5. The application is unopposed as indicated in the respondent's letter dated 17<sup>th</sup> February 2026.
6. I have considered the application and the affidavit in support. The principles that guide the Court in applications for extension of time are well settled. The Supreme Court of Kenya pronounced itself on the question of extension of time in the case of **Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR**, and stated as follows:

***“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”***

7. Additionally, in **Salat vs. Independent Electoral and Boundaries Commission & 7 Others [2014] KESC 12 (KLR)**

the Supreme Court of Kenya determined: that extension of time is not a right of a party but an equitable remedy available to a deserving party at the discretion of the court; that the party seeking extension of time has the burden to lay a basis to the satisfaction of the court; that extension of time is a consideration on a case to case basis; and that delay should be explained to the satisfaction of the court. Other factors include whether there will be prejudice suffered by the respondents if the extension is granted; whether the application is brought without undue delay; and public interest.

8. In effect, although the court has unfettered discretion under **rule 4** of the **Court of Appeal Rules**, that discretion should be exercised judicially, and each case must be considered on its own facts. In the present case, beyond the statement by the

applicant that she was unable to appeal because she was incarcerated, no explanation

in her supporting affidavit speaks to or explains the 5 years and 5 months delay in lodging her appeal.

9. I am inclined to decline the application. The same is hereby dismissed.

**Dated and delivered at Nairobi this 24<sup>th</sup> day of April, 2026.**

**L. NJUGUNA**

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

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

**Signed**

**DEPUTY**  
**REGISTRAR**

