



**Nderitu v Republic (Criminal Appeal (Application)  
E005 of 2024) [2024] KECA 992 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KECA 992 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPEAL (APPLICATION) E005 OF 2024**

**JM MATIVO, JA**

**JUNE 20, 2024**

**BETWEEN**

**IBRAHIM WAHOME NDERITU ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for leave to file an appeal out of time from the Judgment of the High Court of Kenya at Nyahururu (C.M Kariuki, J.) dated 7th March 2024 in HCCRA No. 06 of 2020 Criminal Case No. 2108 of 2018)*

**RULING**

1. The application before the Court is dated March 26, 2024. The main prayer is for leave to be granted to the applicant to appeal out of time against the judgment issued in HCCRA No. E06 of 2021 on November 3, 2023.
2. The applicant, Ibrahim Wahome Nderitu, together another were charged before the Chief Magistrate Court in Criminal Case No. 2108 of 2018 at Nyahururu with three (3) counts of the offence of robbery with violence contrary to section 296 (2) of the Penal Code. Two counts of Gang rape contrary To Section 10 of the Sexual Offences Act No. 3 of 2006 and breaking into a Building and Committing a Felony contrary to Section 306 (a) of the Penal Code. The appellant was convicted on all counts and sentenced to thirty (30) years on count 1, thirty years (30) on count 2 and 3, twenty years (20) on count 4 and 5 and three (3) years on count 6. The sentences were to run concurrently.
3. The applicant appeal against conviction and sentence was dismissed and the sentence by the Senior Resident Magistrate affirmed. Even though aggrieved, the applicant failed to lodge his notice of appeal within the statutory-stipulated time of fourteen (14) days. His present application invokes rule 4 of the Court of Appeal Rules to enlarge the time he is permitted to file his appeal.



4. The applicant vide supporting affidavit sworn on March 27, 2024 contended that he was poor and did not have money to instruct an advocate to represent him. He therefore implored this Court to allow him to appeal out of time and he promised to abide by any decision of this Court in the interest of justice.
5. In response to the application vide written submissions dated June 18, 2024, Mr. Omutelema Senior Assistant Director of Public Prosecution amiably conceded to the leave application and submitted that given the length of the sentence the applicant is serving, then the delay of 5 days in filing his appeal is not inordinate.
6. It is trite that this Court has unfettered discretion under Rule 4 of the Court Rules, to extend time for the doing of any act under the Court Rules. However, that discretion must be exercised judicially. In this regard, it has also been stated time and again that the reason for the delay, the length of the delay, the degree of prejudice to be suffered by the respondent, and the possible chances of the intended appeal succeeding, are all relevant factors in the exercise of such discretion. (See Leo Sila Mutiso v Rose Hellen Wangari Mwangi (Civil Application No. NAI 255 of 1997).
7. This discretionary power, however, is judicial in nature and must be confined to the rules of reason and justice. The Supreme Court in Nicholas Kiptoo Arap Korir Salat vs. I.E.B.C. & 7 others (2014) eKLR, thus:
  - “ 1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
  2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
  3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
  4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
  5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  6. Whether the application has been brought without undue delay; and
  7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
8. I have considered the application, the Memorandum of Appeal, the supporting affidavit dated March 27, 2024, and the respondent’s submissions in concession of the motion. In applying the principles in Nicholas Kiptoo Arap Korir Salat vs. I.E.B.C. & 7 others (*supra*) case, I am satisfied that the applicant is deserving of my exercise of discretion in his favour. The Motion has merit and I allow it. Let the applicant file a Notice of Appeal within 7 days and a Record of Appeal within 30 days hereof and the appeal thereafter be placed before the Court for hearing.
9. Orders accordingly.

**DATED AND DELIVERED AT NAKURU THIS 20<sup>TH</sup> OF JUNE, 2024.**

**J. MATIVO**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

