



**Kiano v Republic (Miscellaneous Criminal Application E013 of 2024)  
[2024] KEHC 11350 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11350 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS CRIMINAL APPLICATION E013 OF 2024  
JN ONYIEGO, J  
SEPTEMBER 30, 2024**

**BETWEEN**

**RAMADHAN ADEN KIANO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Ramadhan Aden Kiano, the applicant herein, was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars were that on 21.03.2018 at Adhele within Madogo Location of Tana River County, he murdered Ramadhan Osman.
2. He thereafter entered a plea bargaining agreement with the state and was charged with a lesser offence of manslaughter leading to the murder charge being withdrawn. He thus pleaded guilty to the offence of manslaughter on 25<sup>th</sup> March 2021. He was subsequently convicted and sentenced to 20 years' imprisonment.
3. The applicant has since approached this court under certificate of urgency through his notice of motion filed in this court on 29.05.2024 seeking for leave to file his appeal out of time. That the appeal has a high chances of success.
4. The applicant's application is supported by an affidavit sworn by himself stating that soon after his conviction, his family promised to hire a lawyer for him but all in vain owing to financial constraints. He urged this court to allow his application as it has high chances of success.
5. The prosecution opposed the application arguing that the same was an afterthought and an abuse of the court process. It was submitted that the said application ought to have been filed before the Court of Appeal and not before this court. That the applicant was not deserving of the orders sought and therefore, the application ought to be dismissed.



6. I have considered the application herein and the oral submissions by parties. The only issue for determination is whether the applicant's prayer for extension of time to file his appeal to the court of appeal out of time should be granted.
7. Article 164(3) of the *Constitution* and Section 379(1) of the *Criminal Procedure Code* make provision on hearing of appeals from this court. [ Also see section 7 of the *Appellate Jurisdiction Act*, Cap 9 Laws of Kenya; Rule 4 and 44 of the *Court of Appeal Rules*, 2022].
8. In the same breadth, factors to be considered when determining an application for extension of time have been elaborated in various judicial pronouncements. In *Paul Wanjohi Mathenge vs Duncan Gichane Mathenge* [2013] eKLR the Court of Appeal discussed those factors as follows:

“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...”
9. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR laid down the principles that govern the exercise of discretion in applications for extension of time as follows:
  - i. 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;
  - ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.
  - iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
  - iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
  - v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  - vi. Whether the application has been brought without undue delay; and
  - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
10. The matter herein has previously been dealt with by this court. In other words, the applicant having been charged before this court, his matter was heard and a final determination made on his own plea of guilty.
11. It therefore follows that in as much as the order sought herein are discretionary in nature, it is my view that the same has been made in a wrong forum. I say so for the reason that good governance demands that cases be handled procedurally in the right forum. The right forum to determine the issue herein ought to be the Court of Appeal as it is the court with the requisite appellate jurisdiction. In any event, even if I had powers which I do not have, the delay in filing the application is inordinate thus defeating the need to exercise equity.



12. In my view, this court at this stage is functus officio and as a consequence, the application herein is dismissed for being unmeritorious.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2024**

**J. N. ONYIEGO**

**JUDGE**

