

**IN THE COURT OF
APPEAL AT KISUMU
(CORAM: KIMARU, JA (IN CHAMBERS))
CRIMINAL APPLICATION NO. E015 OF
2025 BETWEEN**

**SIMON CHENGE SIKOWO.....APPLICANT
AND REPUBLIC**

.....
RESPONDENT

(Being an application for extension of time from the Judgment of the High Court of Kenya at Bungoma (Ali Aroni, J) dated 23rd January, 2023

in

H.C Criminal Petition No. 2 of 2022)

RULING

1. **Simon Chenge Sikowo**, the applicant herein was convicted, with others, of the offence of **murder** under **section 203** as read with **section 204** of the **Penal Code** by the High Court sitting at Bungoma (Omondi H., J) (as she then was) on 10th February, 2015. The applicant was sentenced to suffer death on 3rd March, 2015. The applicant, with others, lodged an appeal to this Court (differently constituted) (C.A. Criminal Appeal No. 42 of 2015). The applicant's appeal was dismissed and the Judgment of the trial court affirmed on 31st January, 2020.

2. One could have thought that that be the end of the matter.

Undeterred, the applicant and his co-convicts filed a petition before the High Court seeking to overturn the sentence of death that was imposed on them by the High Court and affirmed by the Court of Appeal on the grounds, *inter alia*, that the sentence was arbitrary and inappropriate. The High Court declined to assume jurisdiction and dismissed the petition on 23rd January, 2023.

3. It is this dismissal that the applicant seeks the exercise of this discretion to be allowed extension of time to appeal out of time under **Rule 4** of the **Court of Appeal Rules**. The present application was filed before this Court on 20th January, 2025. The applicant attributes the reason for the delay in lodging the notice of appeal in time to lacks of funds to instruct counsel to represent him in the appeal. The applicant pleads with the Court to exercise its discretion in his favour and allow him to appeal to this Court.

4. The respondent did not file any response to the application.

5. This Court has carefully considered the applicant's application. The issue that immediately jumped to the fore is

whether this Court has jurisdiction to entertain this application

and thereafter, if the application is allowed, the appeal itself. It was evidence to this Court that once this Court pronounced itself on 31st January, 2020 in the Judgment delivered on that day, this Court became *functus officio* for all intents and purposes. No litigation craft by the applicant, however pleaded, can change this fact. The only course of action, then available to the applicant was to lodge the appeal, subject to leave, to the Supreme Court against the decision of this Court. Filing an appeal disguised as a Constitutional Petition before the High Court will not do. The applicant has reached the end of the road. The High Court and this Court lacks jurisdiction to entertain any form of plea by the applicant. Both Courts are *functus officio*. Its tools of trade have been used, hung up and stored.

6. The application lacks merit and is hereby dismissed.

Dated and delivered at Kisumu this 15th day of October, 2025.

L. KIMARU

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

**I certified that this is
a true copy of original.**

DEPUTY REGISTRAR.