



REPUBLIC OF KENYA



KENYA LAW
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**JOO v Republic (Criminal Application E020 of 2024)
[2025] KECA 1694 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1694 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E020 OF 2024
MSA MAKHANDIA, JA
OCTOBER 15, 2025**

BETWEEN

JOO APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for extension of time from the Judgment of the High Court of Kenya at Siaya, (Aburili, J.,) dated 10th May, 2022 in HCCRC No. E023 of 2021)

RULING

1. The Applicant was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He returned a plea of not guilty but was nonetheless tried and convicted of the offence, whereupon he was sentenced to 35 years imprisonment.
2. Immediately upon conviction, the applicant took steps to lodge a notice of appeal and thereafter requested the proceedings to facilitate the filing of the record of appeal. Unfortunately, the notice was never received by this Court, and the proceedings were never availed to him in time.
3. Compounding this procedural setback, the applicant was diagnosed with Acute Myeloid Leukaemia (AML), shortly thereafter, a life-threatening condition that has kept him in hospital and rendered him physically and mentally unable to pursue his appeal diligently. He also apparently relied on the assistance of a government-assigned pro bono advocate, whom he reasonably believed had filed the appeal, only to later discover that no such action had been taken.
4. The applicant is still keen to pursue his undoubted right of appeal. However, he cannot do so due to the bottleneck of time. He cannot file a valid notice of appeal nor record of appeal as the timelines for doing so under this Court's rules have long passed. It is for this reason that he has mounted this application so that he may be allowed to file the notice of appeal and subsequently the record of appeal out of time.



The applicant has not cited any rule of this court underpinning this application. However, from the body of the application, one can easily tell that he is invoking rule 4 of the court of appeal rules.

5. The applicant argues that, the delay in filing the appeal was not deliberate. It was occasioned by circumstances beyond his control. That the intended appeal raises substantial issues of law and fact, and that he is serving a lengthy sentence. It is therefore in the interest of justice that he be granted an opportunity to exhaust the appellate process.
6. There was no response to the application by the respondent though served with the application on 10th September 2025 at 12.09 pm, if the email in the record before me is anything to go by. I will therefore treat the application as unopposed. The applicant filed written submissions in support of the application which I have carefully and considered.
7. I am aware that this Court has jurisdiction under Rule 4 of the Court of Appeal Rules, to extend time. This application is firmly anchored on the foundational principles of justice and the enabling legal framework that empowers this Court to extend time where circumstances so warrant or permit. Rule 4 of this Court's Rules vests this Court with wide discretion to extend time for the doing of any act or taking any step under the Rules, including the filing of an appeal.
8. The Rule is deliberately framed in broad terms to allow the Court to consider the unique circumstances of each case and to avoid injustice occasioned by rigid timelines. In my view, this case presents compelling grounds for the exercise of this discretion. There is no doubt at all that the applicant took initial steps to lodge a Notice of Appeal and requested for the proceedings, but was thwarted by administrative lapses and a debilitating medical condition, which rendered him unable to follow up on the appeal process. He further relied on a pro bono advocate, whom he reasonably believed had filed the appeal, only to later discover that no such action had been taken.
9. Denying the Applicant an opportunity to be heard on appeal despite his genuine efforts and the extraordinary circumstances, would offend these principles in my considered view. The applicant's delay was not borne of indolence or disregard for procedure, but of illness, lack of legal support, and systemic failure.
10. The Supreme court in the case of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR stated as follows: Extension of time being a creature of equity, one can only enjoy it if he acts equitably: he who seeks equity must do equity. Hence he has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it.
11. The Supreme Court in the same case then set out the conditions for extension of time to file an appeal 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.
12. Taking into account all the foregoing I am inclined to exercise my unfettered discretion in favour of the applicant. I accordingly allow the application, and grant leave to the applicant to appeal out of time. The applicant will have to do so within the next forty-five (45) days from the date of this ruling.

DATED AND DELIVERED AT KISUMU THIS 15TH DAY OF OCTOBER, 2025.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR.

