



**Okinja v Republic (Criminal Application E107 of 2024)
[2025] KECA 1695 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1695 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E107 OF 2024
MSA MAKHANDIA, JA
OCTOBER 15, 2025**

BETWEEN

STEPHEN ONYANGO OKINJA 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 28th June, 2022 in HCCRC No. E022 of 2021)

RULING

1. Stephen Onyango Okinja, “the Applicant”, herein was charged, tried, convicted, and sentenced to fifty [50] years imprisonment on the 28th June 2022 by the High Court of Kenya at Siaya [Aburili J.] for the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. Being dissatisfied with both the conviction and sentence, the applicant desired to exercise his undoubted constitutional right of appeal but was unable to do so within the prescribed statutory timeframe owing to circumstances beyond his control.
3. The applicant has now moved this Court by way of his motion on notice dated 4th July 2024, in which he does not cite the relevant rule of this Court under which the application is underpinned. However, from the body of the application, the grounds in support thereof and the supporting affidavit, I discern that the application is brought under Rule 4 of the Court of Appeal Rules, 2022, and will proceed to treat it as such.
4. The power of this Court to extend time for filing an appeal is provided for under Rule 4 of the Court of Appeal Rules, 2022, thus:

“The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act



authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”

5. The principles guiding the exercise of this discretion were articulated in *Harrison Kariuki Njuguna v Republic* [2020] eKLR and *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR. Essentially it is that the decision whether or not to extend time for appealing is discretionary. In general, the matters which the Court takes into account in deciding whether or not to grant an extension of time are; the length of the delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, and the likely prejudice to the parties either way.
6. The applicant avers that he was convicted and sentenced on the 28th day of June 2022. Being a layperson and unrepresented at the time of judgment, he was not informed promptly of the procedure and timelines for lodging an appeal. That further, following his incarceration at Siaya Main Prison, he faced logistical and financial challenges in obtaining the typed proceedings and judgment necessary for the preparation of an appeal. However, upon securing legal assistance through the Naivasha Maximum Security Prison paralegals programme, he immediately took steps to file this application.
7. The delay was therefore neither deliberate nor inordinate, but occasioned by genuine circumstances beyond his control which has sufficiently been explained and excusable under the circumstances. That if this Court was to decline to extend time, the applicant will be permanently deprived of his constitutional right to appeal against conviction and sentence, thereby suffering grave injustice. It would also amount to an infringement of his right to a fair hearing under Article 50[2][q] of *the Constitution*, which guarantees every convicted person the right “to appeal to, or apply for review by, a higher court as prescribed by law.”
8. Conversely, no prejudice will be suffered by the respondent should the application be allowed, as it will have the opportunity to respond fully to the appeal on its merits.
9. I note that though the respondent was served on 10th September 2025 at 12.30 pm and in good time with the application, to date it has not filed any papers in opposition to it. I will take it therefore that the application is unopposed.
10. Arising from the foregoing, this is my take on the application! Article 25[c] of *the Constitution* declares the right to a fair trial as non-derogable. The right to appeal forms part of the fair trial guarantees and must therefore be protected.
11. Article 48 obliges the State to ensure access to justice for all persons, while Article 159[2][d] requires courts to administer justice without undue regard to procedural technicalities.
12. The African Charter on Human and Peoples’ Rights [Article 7] and the International Covenant on Civil and Political Rights [Article 14[5]], to which Kenya is a party, both affirm the right of a convicted person to have their conviction and sentence reviewed by a higher tribunal.
13. Guided by the foregoing and principles of justice, equity, and fairness, I am inclined to exercise my unfettered discretion in favour of the applicant and grant him the leave sought having demonstrated reasonable cause for the delay in filing the appeal; acted with diligence once circumstances permitted and stands to suffer irreparable prejudice if denied an opportunity to challenge his conviction and sentence.
14. Accordingly, leave is hereby granted to the applicant to file and serve the Notice and Record of Appeal out of time. He should do so within the next forty-five [45] days from the date hereof.



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

ASIKE-MAKHANDIA

JUDGE OF APPEAL

