



**Sinoga v Republic (Criminal Application E088 of 2024)
[2025] KECA 1803 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1803 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E088 OF 2024
MSA MAKHANDIA, JA
OCTOBER 30, 2025**

BETWEEN

BENARD OTIENO SINOGA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for extension of time to file appeal from the Judgment of the High Court of Kenya at Migori, (Wendoh, J.,) Dated 25th February, 2022 in HCCRC NO. E001 of 2017)

RULING

1. Benard Otieno Sinoga, the applicant herein, was tried, convicted and sentenced to twenty-five years imprisonment on the information of murder contrary to section 203 as read together with section 204 of the Penal.
2. Dissatisfied with the trial court's decision, the applicant is desirous of lodging an appeal into this court. However, he cannot do so automatically for the reasons that he has been caught up with the strictures of time imposed by the rules of this Court for the filing of an appeal. According to the applicant, he was unable to commence the appellate process within time as he was not supplied with the judgment of the trial court in time. It was not until recently that he was able to access the judgment, by which time, the period permitted by the rules of this Court for the filing of an appeal had long gone by.
3. It is for all these reasons that the applicant has taken out this motion on notice seeking for extension of time within which to lodge and serve the Notice of appeal as well as the record of appeal. I note that though the respondent was served with the application, it has to date not filed any papers in opposition to the application. Similarly, much as the respondent was served with the hearing notice for today of the application, it has not filed any written submissions either opposing or supporting the application. I would therefore take it that the application is unopposed.



4. I have carefully considered the application, the grounds in support thereof and the supporting affidavit, and this is my take!

Extension of time by this Court is provided for under Rule 4 of the Court of Appeal Rules and is discretionary. It is a broad and unfettered discretion remedy that a party can apply for if he misses a deadline, but it is not a right and requires the applicant to provide material evidence to support the application demonstrating a good and sufficient cause for the delay. To succeed, the applicant must also show that he has an arguable appeal explain the delay, and demonstrate that granting the extension will not cause substantial prejudice to the other party. The court will of course consider factors such as the length of the delay, the reason for it and any potential harm to the respondent.

5. In the case of Wanyoike Kariuki vs Republic COA CRAPPL E060 of 2024, Relying on the dicta in Andrew Kiplagat Chemaringo V. Paul Kipkorir Kibet [2018] eKLR where it was opined that;

“...the law does not set out any minimum or maximum period of delay. All it states is that the delay should be satisfactorily explained, A plausible and satisfactory explanation for the delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

6. See also the Court’s Ruling in Sila Mutiso vs Helen Wangari, (NRB) Civil Application No. 251 of 1997, where the court opined that;

“...first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

7. The applicant duly admits that he has taken long for him to lodge the intended appeal however due to the aforementioned reasons the applicant was not in a position to appeal on time.

8. There being no counter to the assertions by the applicant by the respondent, I am satisfied that, the applicant has precisely demonstrated his reasons for the delay in filing the intended appeal

in time. Further, I find that no prejudice will be suffered by the respondent in the event that the application is granted. I am also aware that the applicant is serving a lengthy sentence and it is only fair and in the interest of justice that he be allowed to exhaust the appellate process.

9. I accordingly allow the application and direct that the applicant files his intended appeal within the next forty-five (45) days from the date of this ruling.

DATED AND DELIVERED AT KAKAMEGA THIS 30TH DAY OF OCTOBER, 2025.

ASIKE-MAKHANDIA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

