

**IN THE COURT OF
APPEAL AT KISUMU**

**(CORAM: ASIKE-MAKHANDIA, JA (IN
CHAMBERS) CRIMINAL APPLICATION NO.**

E012 OF 2024 BETWEEN
SUSAN NYAWERA CHEGE.....APPLICANT
AND
REPUBLIC.....RESPONDENT

(Being an application for leave to file an appeal out of time)

RULING

[1] The applicant was convicted and sentenced to death on the information charging him with the offence of Murder in Bungoma High Court Criminal Case No.035 of 2010 on 20th December, 2020. The sentence was however, subsequently commuted to life imprisonment by the President of the Republic of Kenya.

[2] Desirous to appeal and since the time limited for doing so under the Rules of this court had expired, the applicant has now lodged the present application dated 6th November, 2023, seeking leave to appeal out of time and as a pauper. In support thereof, the applicant claims that, he was unable to do so since he is incarcerated and his family cannot raise the amount required to prepare the record of appeal. He further asserts that his constitutional right to exhaust the appellate process will be violated if he is denied the extension sought

and finally, that the intended appeal
has high chances of success.

[3]The respondent was duly served with the application and in response have stated that it opposes the application on the grounds that the delay in filing the notice of appeal and memorandum of appeal was inordinate and the reasons adduced in the supporting affidavit are not satisfactory.

[4]From the record, the applicant was convicted and sentenced on 20th December 2020. This application was lodged on 6th November 2023. Whereas the delay of close to three years may appear inordinate, considering however, the applicant's circumstances, it is not difficult to appreciate the applicant's situation. The applicant has undoubted constitutional right to exhaust the appellate process and to deny her that right would be prejudicial to the applicant. The respondent will suffer no prejudice if the application is granted as it will also have its day in court during the hearing of the intended appeal.

[5]Accordingly, I allow the application and direct the applicant to process his appeal within the **forty-five days** from the date of this ruling.

Dated and delivered at Kisumu this 19th day of November, 2025.

ASIKE-MAKHANDIA

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR