

**IN THE COURT OF
APPEAL AT KISUMU**

**(CORAM: ASIKE-MAKHANDIA, JA (IN
CHAMBERS))**

CRIMINAL APPLICATION NO. E34 OF 2024

BETWEEN

JOHN ETIANG.....APPLICANT

AND

REPUBLIC.....RESPONDENT

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

RULING

[1] **John Etiang, “the applicant”**, was charged with the offence of robbery with violence contrary to **Section 296 (2)** of the Penal Code. He was upon full trial convicted and sentenced to 50 years imprisonment. Aggrieved, he moved to the High Court of Kenya at Bungoma on appeal. The High Court in a judgment delivered on 24th November 2020, upheld the conviction and sentence and thereby dismissed the appeal in its entirety.

[2] Desirous of appealing to this Court and realizing that the time for doing so has already expired pursuant to the rules of this court, the applicant has now filed this application seeking for extension of

time within which to file and serve his record of appeal.

[3]He advances the argument that he could not appeal on time because he was not furnished with the first appellate court's Judgment in time. That, he is also incarcerated and therefore unable to raise funds for the preparation of the record nor can members of his family assist as they are indigent.

[4]The application was duly served on the respondent and in response, though it acknowledged the delay, it was nonetheless not opposed to the application.

[5]The Supreme Court of Kenya pronounced itself on the question of extension of time in the case of **Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet [2018] eKLR**, when it stated as follows:

“...the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for 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]In this matter, the decision sought to be appealed was delivered on 24th of November 2020. This is a period of about 5 years. Outrightly, a duration of 5 years delay is inordinate. It requires a plausible explanation to warrant the extension sought. The applicant in this

instance avers that he was not served with the judgment of the first appellate court which has not been discounted.

[7] I have also considered the fact that the applicant is incarcerated, representing himself and more importantly given the nature of the sentence being served, to wit, 50 years imprisonment, the extension of time will not unduly prejudice the respondent.

[8] Considering all the foregoing and in the light of the concession to the application by the respondent, I allow it, and direct the applicant to process and file his appeal within the next **forty-five (45) 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