



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wesonga v Republic (Criminal Application E037 of 2024)  
[2025] KECA 1995 (KLR) (19 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1995 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION E037 OF 2024  
MS ASIKE-MAKHANDIA, JA  
NOVEMBER 19, 2025**

**BETWEEN**

**CLEOPHAS WESONGA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

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

**RULING**

1. Cleophas Wesonga, “the Applicant”, was tried, convicted and sentenced to suffer death for the offence of robbery with violence contrary to Section 296 (2) of the Penal Code in Criminal Case No. 1708 of 2000 at Bungoma Law Courts. His appeal to the High Court of Kenya at Bungoma being Criminal Appeal No.85 of 2005 was upon hearing dismissed in its entirety. The applicant now wishes to appeal against the judgment of the first appellate court in to this court. However the timelines of this Court for doing so under the Rules are long gone. It is for that reason that the applicant has mounted this application, dated 7th January, 2025 seeking leave to appeal out of time and as a pauper.
2. The main ground advanced by the applicant in support of the application is that he was not supplied with the judgment of the first appellate court for purposes of preparing and filing the intended appeal in time. When served with the application, the respondent in opposing the application retorted thus: “Upon perusal of the application and appreciation of the contents of supporting affidavit thereto, we oppose it. The appellant has not stated whether he filed a notice of appeal in the High Court so that the record of appeal may be supplied to him. We opine that the delay in filing the memoranda of appeal is inordinate and the reasons adduced in the supporting affidavit are not satisfactory. Consequently, we object to the application for extension of time to file an appeal.”
3. From the record, the applicant’s appeal was dismissed by the first appellate court on 25th May, 2005. This application was lodged on 7th January 2021. Whereas the delay of close to fifteen years appear



very inordinate, considering however, the applicant's circumstances, it is not difficult to appreciate his situation. Whether he filed a Notice of Appeal in the first appellate court is neither here or there. The applicant has undoubted constitutional right to exhaust the appellate process and to deny him that right would be prejudicial to the applicant and considering further that the applicant was sentenced to death. 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.

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

**DATED AND DELIVERED AT KISUMU THIS 19<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**ASIKE-MAKHANDIA**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Deputy Registrar

