

**IN THE COURT OF
APPEAL AT KISUMU**

(CORAM: OMONDI, JA, (IN CHAMBERS))

CRIMINAL APPLICATION NO. E111 OF

2024 BETWEEN

DENNIS MULIGA.....APPLICANT

AND

REPUBLIC.....RESPONDENT

*(Being an application for leave to file appeal out of time
against the conviction and sentence of the High Court of Kenya
at Kakamega (P. J. Otieno) dated 13th October 2022*

in

HCCRA No. 101 of 2019)

RULING

1. Dennis Muliga, the applicant was convicted on the offence of robbery with violence contrary to section 296 (2) of the Penal Code; and sentenced by the trial court to a term which is undisclosed. He appealed against the conviction and sentence in Kakamega HCCRA No. 101 of 2019, but the same was dismissed in its entirety. He was aggrieved by the decision; and ought to have lodged his appeal within 14 days of the outcome, but he did not.
2. Dissatisfied by that outcome, the applicant wishes to appeal to this Court, but realises that the time within which to file his

appeal has lapsed, so he has now filed the Notice of Motion dated 3rd day of July 2024 seeking leave to file, and serve the Notice of Appeal out of time. He explains that the delay was due to the fact that he was not supplied with the High Court proceedings and Judgment to enable him file his appeal.

3. There was no response to this application. This Court is allowed to exercise its unfettered discretion as provided under rule 4 of the Court of Appeal Rules which provides as follows:

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.

4. Rule 4 of the Court of Appeal Rules does not provide for factors the court ought to consider in an application for extension of time but courts have devised appropriate principles to be applied in achieving a 'just' decision in the circumstances of each case. The case of **Leo Sila Mutiso vs. Hellen Wangari Mwangi [1999] 2 EA 231** which is

the locus classicus, laid down the parameters as follows:

***“It is now well settled that the decision whether
or
not to extend the time for appealing is
essentially***

discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: 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.”

5. The court observed in **Muringa Company Limited vs. Archdiocese of Nairobi Registered Trustees** **Application No.190 of 2019** observed that:

“Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.”

6. Under Rule 61 (1):

A person who desires to appeal to the Court shall give Notice of appeal in writing, which shall be lodged in six copies with the Registrar of the superior Court at the place where the decision against which it is desired to appeal was given, within fourteen days after the date of that decision, and the notice of appeal shall institute the appeal.

7. I recognize that the notice of appeal ought to have been lodged within 14 days of the delivery of the decision which it seeks to appeal; that did not happen; nor has the applicant filed and served his record of appeal. Under Rule 4 of the Court of Appeal Rules, 2022, this Court has jurisdiction to consider an application for enlargement of time. The power to extend time is a discretionary of delay has to be stated and reasonably explained to the satisfaction of the court; and the court is obliged to also consider whether the intended appeal is arguable and has chances of success, hence not frivolous.
8. I recognize the difficulty the applicant may have faced, but he has been very economical with disclosing vital information; even his memorandum of appeal does not assist, as it is not clear what period of sentence, he is serving nor is it possible to determine what the sentence was at the trial court. The upshot is that the application is not merited and is dismissed.

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

H. A. OMONDI

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JUDGE OF APPEAL

*I certify that this is
a true copy of the
original.*

DEPUTY REGISTRAR