

**IN THE COURT OF APPEAL
AT KISUMU**

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

CRIMINAL APPLICATION NO. EO46 OF

2024 BETWEEN

KEFFA MAYA MONDA ALIAS KOLOMBO.....APPLICANT

AND

REPUBLIC.....RESPONDENT

*Being an application for extension of time within which to
file an appeal against the judgment of the High Court of
Kenya at Nyamira (Maina, J.) dated 27th May 2021
in*

HCCR NO. 22 of 2019)

RULING

1. Keffa Maya Kolombo, the applicant was convicted for the offence of Murder contrary to section 203 as read with 204 of the penal code and sentenced to a term he does not disclose. He was aggrieved by the outcome, both on conviction and sentence, but he failed to file his appeal within the 14 days after delivery of judgment. Nonetheless, he but remains desirous of appealing to this Court.
2. In that regard, the applicant filed this undated application seeking leave for extension of time to file appeal out of

time.

The application is premised on the grounds that was not served with the copy of the Judgment of the High Court on time, to enable him prepare and file his appeal. He believes he argues that the appeal is arguable with overwhelming chances of success; and that the respondent will suffer no prejudice if his application is allowed.

3. The respondent through the written submissions filed by learned Prosecution Counsel points out that the decision sought to be appealed was delivered on 27th May 2021, making it a period of about 4 years, which is described as **“outrightly a duration of 4 years is inordinate”**; and requires a plausible explanation to warrant an extension. Be that as it may, the respondent acknowledges that the applicant being incarcerated, acting *pro se* and that his Notice of Appeal was never delivered to court; and more importantly given the nature of the sentence being served, for imprisonment for conviction of murder, the application for extension of time is conceded.
4. The power to extend time is a discretionary one, which is only exercise-able by the Court upon a satisfactory reason being

given. It is trite law that the entire period of delay has to be stated and reasonably explained to the satisfaction of the court. In considering whether to extend time, the Court is obliged to also consider whether the intended appeal is arguable and has chances of success, hence not frivolous. This finds homage in 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.

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. I also draw from the decision in **Muringa Company Ltd vs. Archdiocese of Nairobi Registered Trustees, Civil Application No.190 of 2019** which 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.”

5. How long was the delay in this instance? 4 years (four).

What was the reason? The applicant is a lay person incarcerated; and did not have the advantage of easily reaching the courts to push for his record of appeal. There is no maximum or minimum period of delay set out under the law, however, the reason or reasons for the delay

must be reasonable and

plausible. For instance, in Andrew **Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR**, this Court stated:

“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.”

Under Rule 61 (1) of this Court’s Rules:

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.

6. Undoubtedly 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. I am satisfied that the reasons already alluded to posed a challenge to the applicant to act in a timely manner; and also, as pointed out by the respondent, the sentence the applicant is challenging is a long one which if his prayer is denied will occasion him great prejudice.

7. The upshot is that the application is merited and is allowed.

The applicant is granted extension of time to file and serve the notice of appeal out of time within fourteen (14) days of today's date. The applicant shall file and serve the respondent with the record of appeal within thirty (30) days **upon service of the Notice of Appeal.**

Dated and delivered at Kisumu this 30th day of January, 2026.

H. A. OMONDI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR