



**Masanchu v Republic (Criminal Application E126 of 2024)
[2026] KECA 269 (KLR) (13 February 2026) (Ruling)**

Neutral citation: [2026] KECA 269 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E126 OF 2024
HA OMONDI, JA
FEBRUARY 13, 2026**

BETWEEN

MAROA STEPHEN MASANCHU APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application against the judgment of the High Court of Kenya at Homa Bay (Majanja, J.) dated 6th April, 2016 in HCCRA No. 2 of 2014)

RULING

1. Maroa Stephen Masanchu, the applicant herein was charged with the offence of murder contrary to section 203 as read with section 204 of the penal and convicted to serve death sentence in Homa Bay High Court Criminal Case No. 2 of 2014, the same was commuted to life sentence by the president. He was dissatisfied with the outcome but did not apply on time as he failed to apply for records; and now prays to be supplied with a copy of the trial court's proceedings and its judgement.
2. Desirous of appealing to this Court, the applicant has filed the application dated 29th July 2024, seeking leave for extension of time to file and serve his Record of Appeal of appeal out of time.
3. The respondent through learned Principal Prosecution Counsel Ms. Eunice Kanyita acknowledges that the power to extend time is a discretionary one, which is only exercise-able by the Court upon a satisfactory reason being given; and that the entire period of delay has to be stated, and reasonably explained to the satisfaction of the court. Counsel points out that in this matter, the decision sought to be appealed was delivered on 12th April 2016, making it a period of about 9 years, which she describes as outrightly inordinate, and will require a plausible explanation to warrant an extension. Nonetheless, she concedes the application, pointing out that the applicant is incarcerated, representing himself and that his Notice of Appeal was never delivered to court, and more importantly given the nature of the sentence being served, to wit, imprisonment for murder.



4. Rule 4 of the Court of Appeal Rules clothes this Court with unfettered discretion in the following terms:

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.

5. The Rule 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. In general, the matters which this Court takes into account in deciding whether to grant an extension of time are the length of the delay, the reason for the delay thirdly (possibly) the chances of the appeal succeeding if the application is granted; and the degree of prejudice to the respondent if the application is granted.

6. In this instance, there is no prejudice alluded to by the respondent, who in any event has no objection to the application. The only factor I will point out is that the prosecution counsel seems to have cut and pasted submissions from another similar application without amending details, so she refers to a different prison term. 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.”

7. The notice of appeal ought to have been lodged within 14 days of the delivery of the decision which it seeks to appeal as provided under Rule 61 of this Court’s Rules. However, that did not happen; nor has the applicant filed and served his record of appeal. I am persuaded that the reason 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.

8. Ultimately, I find 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 13TH DAY OF FEBRUARY, 2026.

H. A. OMONDI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

