

**IN THE COURT OF APPEAL  
AT KISUMU**

**(CORAM: KIMARU, J.A. (IN CHAMBERS))**

**CRIMINAL APPLICATION NO. E017 OF  
2026 BETWEEN**

**KELSON LINYIENGA.....APPLICANT**

**AND**

**REPUBLIC.....RESPONDENT**

*(Being an application for extension of time to file an appeal out of time from the Judgment of the High Court of Kenya at Kakamega (W.*

*Musyoka, J) dated 23<sup>rd</sup> February, 2022*

*in*

**HCCRA No. 62 of 2019)**

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**RULING**

[1]**Kelson Linyienga**, the applicant herein, was convicted of the robbery with violence contrary to **Section 296(2)** of the **Penal Code**. He was sentenced to death. His first appeal to the High Court was unsuccessful. The applicant wishes to exercise his right of second, and perhaps, the last appeal to this Court.

[2]The applicant has moved this Court substantially pursuant to **Rule 4** of the **Court of Appeal Rules**, seeking to be granted leave to appeal out of time. The applicant states that he was prevented from filing the appeal in time due to miscommunication between himself and his relatives who had indicated that they would hire an advocate to act on his behalf. Due to this delay, by the time he realised that the promised assistance was not forthcoming, the time by which he was required to lodge the notice of appeal had elapsed. The applicant urged the Court to exercise its discretion in his favour and give him the opportunity to ventilate his appeal to this Court. The application is supported by the annexed affidavit of the applicant.

[3] The respondent is not opposed to the application. They submitted that the period of delay was not inordinate as to disentitle the applicant his right of appeal.

[4] **Rule 4** of the **Court of Appeal Rules** grants this Court unfettered discretion to extend time for any steps to be taken beyond the period prescribed by the Rules. In this present application, the applicant states that he was prevented from lodging the notice of appeal in time due to the fact that his relatives had promised to hire an advocate to file appeal on his behalf. He relied on their promise to his detriment. By the time he realised nothing had been done, the time upon which he was required to lodge the noticed of appeal had elapsed. The reason for the delay is excusable. The applicant shall be given a chance to ventilate his appeal to this Court since he is facing the ultimate punitive sentence.

[5] The application has merit. It is hereby allowed. The applicant shall file and serve the notice of appeal within **fourteen (14)** days of today's date.

**Dated and delivered at Kisumu this 12<sup>th</sup> day of March, 2026.**

**L. KIMARU**

.....  
**. JUDGE OF  
APPEAL**

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

**DEPUTY REGISTRAR**