

**IN THE COURT OF
APPEAL AT KISUMU**

(CORAM: OMONDI, JA (IN CHAMBERS))

CRIMINAL APPLICATION NO. E054 OF 2025

BETWEEN

CLEOPHAS NGEYWO KITAI.....APPLICANT

AND

REPUBLIC.....RESPONDENT

(Being an application against the judgment of the High Court of Kenya at Bungoma (Shariff, J.) dated 27th June 2025

in

**HCCRA No. E086 of
2021)**

RULING

1. Cleophas Ngeywo, the applicant was charged and convicted of the offence of Robbery with Violence contrary to Section 296(2) of the Penal Code in CR. Case File No. 746 OF 2018 at Bungoma Law Courts; and sentenced to serve 25 years imprisonment. Aggrieved by the outcome, he filed an appeal in in Bungoma HCCRA No. E086 of 2021, the sentence was enhanced to 40 years imprisonment (Shariff, J) on 27th day of June, 2025.
2. He was aggrieved by the outcome and desired to appeal to

this court, but was not able to appeal on time as he had not received a copy of the judgment. This propelled him to file the present

Notice of Motion dated 11th November 2025, accompanied by his supporting affidavit of even date, seeking to be allowed to file his appeal out of time,

3. In his written submissions he explains that the main reason why the he did not file his Notice of Appeal is that the First appellate court failed to provide him with the appealed judgement on time, which has never been provided to date; that when he sent the Notice of Appeal to the Court, it was never delivered to Court for action; further, he had relied on his relatives to hire an advocate for him but all in vain leading to late application.
4. Upon consideration of the application and the attached supporting affidavit together with relevant provisions of the law and the Constitution, in the written submissions filed by learned prosecution counsel, Celestine Matere, the application is conceded.
5. In this matter, the decision sought to be appealed was delivered on 27th June 2025, which is less than a year, infact by November 2025, the applicant had already filed this application. Is there any reason to warrant the Court's favourable discretion? 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.

6. The Court acknowledges that Rule 4 does not provide factors to be considered 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. Some of the considerations to be taken into account 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; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity. See **Muringa Company Ltd vs. Archdiocese of Nairobi Registered Trustees Civil Application No.190 of 2019 [2020] eKLR.**
7. The delay in this instance is less than a year; and the reason is that the applicant a lay person being incarcerated did not have the advantage of easily reaching the courts to obtain his records of appeal or establish the fate of his Notice of Appeal. He quickly moved to ameliorate the situation by filing the

application for leave to appeal out of time. Indeed, 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. See for instance the case of **Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR.**

8. The explanation given is plausible and this Court is satisfied that the reasons already alluded to posed a challenge to the applicant to act in a timely manner, and no prejudice will be caused to the respondent, who has in any event conceded the application.
9. 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 27th day of March, 2026.

H. A. OMONDI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR