



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Oguta v Republic (Criminal Application E052 of 2025)
[2026] KECA 684 (KLR) (27 March 2026) (Ruling)**

Neutral citation: [2026] KECA 684 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E052 OF 2025
HA OMONDI, JA
MARCH 27, 2026**

BETWEEN

KENNEDY ONYANGO OGUTA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to file appeal out of time against the judgment of the High Court of Kenya in (Karanja, J.) dated 5th November 2019 in Case No. 30 of 2014)

RULING

1. Kennedy Onyango Oguta, the applicant herein, was charged with the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code vide Criminal Case No. 30 of 2014 at Homa Bay High Court. Upon close of the trial, he was convicted and sentenced to thirty years imprisonment. Much as he had wanted to file an appeal, he did not receive his judgment in time to lodge my appeal on time, thus he prays for extension of time to appeal out of time.
2. In conceding the application, learned prosecution counsel. Ms Kanyita acknowledges that the power to extend time is a discretionary one, which is only exercisable by the Court upon a satisfactory reason being given; that it is trite law that the entire period of delay has to be stated and reasonably explained to the satisfaction of the court. It is further observed that 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.
3. It is pointed out that in this matter, the decision sought to be appealed was delivered on 5th November, 2019 -a period of about 6 years, outrightly amounts to inordinate delay, and it will require a plausible explanation to warrant the court's favourable discretion. Nonetheless, the respondent appreciates that the applicant being is incarcerated, representing himself; and more importantly, given the nature of the sentence being served, to wit, life imprisonment for conviction of Manslaughter, the respondent



is persuaded that the applicant ought to be given a chance to explore all avenues that would address his plight.

4. I have considered the application, the grounds in support thereof, submissions filed and bearing in mind that in an application of this nature, the court is allowed to exercise its discretion. The issue for determination is whether the applicant is deserving of the orders sought. The Court's unfettered discretion is provided under rule 4 of the Court of Appeal Rules 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.

5. 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."

6. The delay in this instance is six (6) years. What was the reason? The applicant is a lay person incarcerated; and did not have the advantage of easily reaching the courts to establish the status of his 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."

7. 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.

The appellant ought to have lodged the notice of appeal 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 persuaded that the reason already alluded to is plausible, his circumstances 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 27TH DAY OF MARCH, 2026.

H. A. OMONDI

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR

