

IN THE COURT OF APPEAL

AT MALINDI

(CORAM: MURGOR, JA - IN CHAMBERS)

CRIMINAL APPLICATION NO. SUP E001 OF 2025

BETWEEN

REPUBLIC.....APPLICANT

AND

NAFTALI CHEGE.....1ST

RESPONDENT

CHARLES WANGOMBE MUNYIRI.....2ND

RESPONDENT

ISMAEL BARAKA BULIMA.....3RD

RESPONDENT

JOHN PAMBA.....4TH

RESPONDENT

(An application seeking an extension of time within which to file an application for certification to the Supreme Court as a matter of general public importance under Rule 4 of the Court of Appeal Rules 2022)

R U L I N G

The Notice of Motion dated 4th November 2025 is brought by

the Applicant pursuant to **Article 163(4)(b)** of **the Constitution, Sections 3A and 3B of the Appellate Jurisdiction Act** and **Rule 4** of the **Court of Appeal Rules, 2022**. The

Applicant seeks for orders that this Court extends time within which it may file an application for certification of an intended appeal to the Supreme Court; that the intended appeal involves a matter of general public importance; and that this Court provides timelines for filing of the application for certification.

The application is premised on several grounds set out on the face of the motion and in the supporting affidavit of Dr. Marcellar Atieno Odero, prosecution counsel. The Applicant contends that a Judgment of this Court in *Criminal Appeals Nos. 23, 34 and 35 of 2022* was delivered on 28th April 2023; that being dissatisfied with the decision, the Applicant lodged a Notice of Appeal dated 11th May 2023 signifying its intention to appeal to the Supreme Court; that on the same date the Applicant requested for certified copies of proceedings which were supplied on 19th September 2023; and that the Applicant had earlier filed *Criminal Application No. E001 of 2023* which, following directions of the Court and by consent of the parties, was withdrawn on 4th November 2025 with leave granted to file a fresh application.

The Applicant contends that the delay in filing the present application was occasioned by the late supply of proceedings and

the procedural developments relating to the earlier application. It was further asserted that the intended appeal raises substantial constitutional questions of general public importance, particularly concerning the scope of police officers' obligations in safeguarding

the rights of arrested persons under **Article 49** of the **Constitution**. The Applicant maintains that no prejudice will be suffered by the Respondents should the orders sought be granted.

The parties filed written submissions. When the application came up for hearing on a virtual platform, learned counsel **Mr. Ondimu** appeared for the Applicant while learned counsel **Mr. Macharia** appeared for the 1st Respondent, **Mr. C. Kimathi** appeared for the 2nd Respondent. There was no appearance for the 3rd and 4th Respondents though counsel were served with the hearing Notice.

In their written submissions, counsel for the Applicant submitted that the application sought to extend time for certification of an appeal to the Supreme Court. It was submitted that the delay in lodging the application for certification arose from the delay in obtaining the certified record of proceedings; that the delay was not deliberate. Further, it was submitted that, the appeal raised matters of general public importance, which matters transcend the circumstances of the case; that the issues in contention are in the nature of public interest as they touch on the scope of police obligations, in so far as they relate to

constitutional accountability.

For his part, counsel for the 1st Respondent stated that they would be supporting the position taken by the 2nd Respondent in their written submissions.

Counsel went on to submit that the matter concerned a murder case against the Respondents who were convicted by the High Court on 15th November 2021 and subsequently acquitted by this Court on 25th April 2023. It was submitted that the delay in bringing this application had been inordinate.

Relying on their written submissions, counsel for the 2nd Respondent opposed the application. Counsel submitted that the present application has been brought more than two years after the impugned Judgment and that the Applicant has not offered a satisfactory explanation for that delay. Counsel further submits that the intended appeal does not raise any issues of general public importance as contemplated under **Article 163(4)(b) of the Constitution**. According to the Respondents, the issues raised relate to the specific facts of the case and which were adequately addressed by this Court in the Judgment sought to be appealed against, and that there was nothing new or novel to be determined by the Supreme Court. It was also submitted that the Respondents would suffer immense prejudice if litigation was commenced, particularly given that the matter has been in court for nearly a decade.

As a brief background, this matter arises from the death of Alexander John Runan Monson (deceased) on 19th May 2012 while in police custody at Diani Police Station, Kwale County. The Respondents, who were police officers stationed at Diani at the material time, had arrested the deceased outside

Tanduri Bar in Diani on suspicion of smoking cannabis. He was escorted to the police station at approximately 2.30 a.m. and later placed in police cells. The following morning, he was found unresponsive and was later taken to Palm Beach Hospital where he died. The post-mortem report concluded that the cause of death was a head injury resulting from blunt force trauma.

Following a public inquest conducted at the Diani Chief Magistrate's Court, the Respondents were charged before the High Court with the offence of murder. After a full trial, the High Court found culpable negligence on the part of the Respondents who were convicted of manslaughter and sentenced to custodial terms. The Respondents appealed to this Court which found that the circumstances did not point to an inference of guilt. Whereupon the conviction and sentence were quashed on 25th April 2023. It is that Judgment that the Applicant now seeks to challenge before the Supreme Court.

Having considered the motion, the affidavit in support, and the rival submissions by counsel, the following issues arise for determination:

a) Whether this Court has jurisdiction to extend time for filing an application for certification under **Article 163(4)(b)** of ***the Constitution***; and

b) Whether the delay in bringing the present application has been satisfactorily explained and whether the interests of justice warrant the exercise of the Court's discretion in favour of the Applicant.

As to whether this Court has jurisdiction to extend time for filing an application for certification under **Article 163(4)(b) of the Constitution**, under **Article 163(4)(b) of the Constitution**, this Court has jurisdiction to determine applications for certification to the Supreme Court that a matter involves a question of general public importance. In appropriate cases, it may also extend time within which such an application is to be filed, provided that the applicant demonstrates sufficient cause. See **Mogere vs Telkom Kenya Limited (Civil Application E474 of 2025) [2026] KECA 381 (KLR); Embassy of Sweden, Nairobi vs Kusewa & another (Civil Application Sup E002 of 2020) [2025] KECA 1337 (KLR) and Odiara & another vs Falcon Properties Ltd & another (Civil Application E014 of 2025) [2025] KECA 2046 (KLR).**

Guided by the above cited authorities, I am satisfied that I

have the requisite jurisdiction to hear and determine this application.

Having so found, the next issue is whether the delay in bringing the present application has been satisfactorily explained and whether the interests of justice warrant the exercise of the Court's discretion in favour of the Applicant.

Under **Rule 4** of this Court's Rules, the discretion of this Court to extend time otherwise limited by these Rules, or decision of this Court, or Superior courts is unfettered. The Rule stipulates that:

“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.”

In the case of **Fakir Mohammed vs Joseph Mugambi & 2 others [2005] eKLR (Civil Application No. Nai. 332 of 2004)**

this Court held that;

“The exercise of this Court's discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possible) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the

importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance-are all relevant but not exhaustive factor.”

See also **Mwangi -vs- Kenya Airways Ltd [2003] KRL 486.**

Rule 36 of the Supreme Court Rules specifies that an application for leave to appeal to the Supreme Court should be made within 14 days from the date of delivery of this Court’s Judgment.

In the instant case, the record shows that Judgment was delivered on 28th April 2023 while the present application was filed on 4th November 2025, a period of delay in excess of 2 years. So that, the Applicant is required to provide reasons for the delay in filing the Record of appeal. The Applicant's explanation for the delay, is principally that the Registry delayed in providing the typed proceedings and also that an earlier application was withdrawn pursuant to directions of the Court.

As to whether or not the delay in supply of the proceedings is a sufficient explanation, in order for the Applicant to rely on the period of time taken by the Registry for preparation of the typed proceedings, the proviso to **Rule 84 (1)** of this Court's rules is explicit. It specifies that:

“...Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with sub- rule (2) within thirty days after the date of the decision against which it is desired to appeal, there shall in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.

(2) An appellant shall not be entitled to rely on the proviso to subrule

(1) unless the appellant's application for such copy was in writing and a copy of the application was served upon the respondent."

In other words, in order to benefit from the proviso to **Rule 84**, which allows for the time for preparation of the proceedings to be excluded from the

computation of the period of delay, it was incumbent upon the Applicant to file and serve the letter bespeaking the proceedings on the Respondents.

In the case of **Mistry Premji Ganji (Investments) Limited vs Kenya National**

Highways Authority [2019] eKLR it was observed that:

“...the computation of the 60-day window within which he should lodge the record of appeal is suspended during the typing of proceedings provided the appellant serves the letter bespeaking proceedings upon the court and the respondent. A certificate of delay is usually issued in such cases, specifying the time taken for the proceedings to be typed, for purposes of exclusion of the same during computation”.

A consideration of the Record shows that the Applicant indeed wrote to the Registry to request for the typed proceedings on 11th May 2023, and which were supplied on 19th September 2023. But there is no indication in the letter that it was either copied to the Respondents, or even served upon them. Since there was nothing that discloses that the letter was served on the Respondents, the Applicants could not benefit from the proviso to **Rule 84** of this Court’s rules to allow the time for preparation of

the proceedings to be excluded from computation of the period of delay. The Applicant would have had to explain the delay for the entire period of 2 years.

Upon considering the Record, besides stating in passing that they withdrew a previous application for which no particulars were provided to the

Court, I cannot find any other material that would explain the 2 years delay. And since the material placed before the Court does not sufficiently explain the prolonged period that elapsed before the filing of the present motion, the only inescapable conclusion that can be reached is that the delay has not been explained.

Turning to the issue of whether the grounds raised in the draft petition have a chance of success, I have considered the grounds, and from my assessment, the questions raised mainly turn on the facts of the case as determined by this Court, rather than issues of general public importance, thereby dispelling any likelihood of success of the appeal.

On the question of prejudice and the interests of justice. The Respondents have submitted that the matter has been in litigation for close to a decade and that they were acquitted by this Court after a full appellate revaluation of the evidence and the law on 23rd April 2023. Given the significant lapse of time between the date of delivery of the Judgment and this application, I am of the view that allowing time to be extended for certification to the Supreme Court will be prejudicial to the Respondents.

In sum, the Applicant having failed to satisfy the requirements of **rule 4**, I decline to exercise my discretion to extend time for lodging of the Applicant's

memorandum, grounds and record of appeal. The Notice of Motion dated 4th November 2025 is devoid of merit and is accordingly dismissed.

It is so ordered.

Dated and delivered at Mombasa this 15th day of May, 2026

A.K. MURGOR

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JUDGE OF APPEAL

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

signed
DEPUTY
REGISTRAR

