



REPUBLIC OF KENYA



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

**Kamais v Republic (Criminal Application E006 of 2025)
[2025] KECA 364 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KECA 364 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E006 OF 2025
JM MATIVO, JA
FEBRUARY 27, 2025**

BETWEEN

JAMES KAMAIIS APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to file an appeal out of time from the ruling of the High Court of Kenya at Nakuru (Prof. J. Ngugi, J.) dated 4th October, 2021 in CRPET. No. 214 of 2018)

RULING

1. The application before the Court is dated 13th January 2025. The main prayer is for leave to appeal out of time against the ruling issued in CRPET. No. 214 of 2018, on 4th October 2021.
2. The applicant, James Kamais and his four accomplices were arraigned before the High Court in Criminal Case No. 115 of 2008 at Nakuru charged with the offence of murder contrary to Section 203 as read with Section 2014 of the *Penal Code*. After hearing, the appellant was convicted and sentenced to death.
3. The applicant's appeal to this Court against conviction and sentence was dismissed. Having exhausted his appeal mechanisms, undeterred, vide High Court Criminal Petition No. 214 of 2018 the applicant petitioned the High Court for resentencing. Nevertheless, the petition was dismissed *vide* ruling delivered on 4th October 2021. Although aggrieved, the appellant failed to lodge his notice of appeal within the statutory stipulated time of 14 days.
4. The applicant contends that he was not able to appeal on time because he was not furnished with the High Court judgment on time to enable him prepare his appeal on time. The applicant has invoked Rule 4 of the *Court of Appeal Rules* to enlarge the time to file his appeal.



5. In response to the application vide written submissions dated 19th February 2025, Mr. S. K. Ruto Prosecution Counsel has amiably conceded to the leave application pointing to the lengthy sentence of 56 years imprisonment.
6. I have considered the application, the supporting affidavit sworn on 12th December 2024 and the respondent's submissions dated 19th February 2025. It is evident that there has been a delay of approximately 3 years and 1 months in filing his appeal against the ruling on his resentencing.
7. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR, and stated as follows:

“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.”
8. In applying the principles in *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* (*supra*), and considering that the applicant is serving lengthy sentence, I am inclined to exercise my discretion in his favour. I direct the applicant to file his notice of appeal within the next 14 days and the memorandum of appeal and the record of appeal within 45 days from today.
9. Orders accordingly.

DATED AND DELIVERED AT NAKURU THIS 27TH DAY OF FEBRUARY, 2025.

J. MATIVO

.....

JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR.

