



REPUBLIC OF KENYA



KENYA LAW
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**Macharia v Republic (Criminal Application E226 of 2024)
[2025] KECA 246 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KECA 246 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E226 OF 2024
JM MATIVO, JA
FEBRUARY 20, 2025**

BETWEEN

FRANCIS MAINA MACHARIA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to file an appeal out of time from the Judgment of the High Court of Kenya at Naivasha (R. Mwongo, J.) dated 16th December, 2020 in CRA No. 38 of 2020)

RULING

1. The application before the Court is dated 30th October, 2024.
The main prayer is for leave to appeal out of time against the judgment issued in HCCRA No. 38 of 2019, on 16th December, 2020.
2. The applicant, Francis Maina Macharia jointly with others were arraigned before the Magistrate's Court in Criminal Case No. 512 of 2017 at Naivasha and charged with the offence of robbery with violence contrary to Section 295 as read with Section 296 (2) of the *Penal Code*. He was convicted of two counts of robbery with violence and sentenced to death.
3. The applicant's appeal to the High Court against conviction and sentence was dismissed vide judgment delivered on 16th December 2020, but, although aggrieved he failed to lodge his notice of appeal within the statutory-stipulated time of 14 days. The applicant contends that he was not able to appeal on time because he was not supplied with the High Court's Judgment to enable him to file his appeal on time. His present application invokes Rule 4 of the *Court of Appeal Rules* to enlarge the time to file his appeal.
4. The respondent has not complied with the directions issued by the Deputy Registrar on 24th December, 2024. Therefore, the instant application is not opposed.



5. I have considered the application, the undated supporting affidavit and the undated notice of appeal. It is evident that there has been a delay of approximately 3 years and 10 months in filing his appeal against the judgment of the High Court.
6. It is trite that this Court has unfettered discretion under Rule 4 of the Court of Appeal Rules, 2022 to extend time for the doing of any act under the rules. This discretionary power, however, is judicial in nature and must be confined to the rules of reason and justice. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat vs. I.E.B.C. & 7 Others* [2014] eKLR, stated:
 - a. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
 - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 - c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 - e. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - f. Whether the application has been brought without undue delay; and,
 - g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
7. I have considered that the applicant is on death row. The reason in support of the application is plausible. I am inclined to exercise my discretion in his favour. I allow the application and 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.

DATED AND DELIVERED AT NAKURU THIS 20TH DAY OF FEBRUARY, 2025.

J. MATIVO

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR.

