



**Maina v Republic (Criminal Application E224 of 2024)
[2025] KECA 264 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KECA 264 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E224 OF 2024
JM MATIVO, JA
FEBRUARY 20, 2025**

BETWEEN

SAMUEL MAINA 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 (G. Ngenya, J.) dated 14th July, 2022 in CRA No. 8 of 2020)

RULING

1. The application before the Court is dated 2nd November, 2024.
The main prayer is for leave to appeal out of time against the judgment issued in HCCRA No. 8 of 2020, on 14th July, 2022.
2. The applicant, Samuel Maina was arraigned before the Magistrate’s Court in Criminal Case No. 473B of 2017 at Engineer 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 and sentenced to 30 years imprisonment.
3. The applicant’s appeal to the High Court against conviction and sentence was dismissed, 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 file 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 supporting affidavit sworn on 2nd November, 2024, and the undated notice of appeal. It is evident that there has been a delay of approximately 2 years and 4 months in filing his appeal against the judgment of the High Court.

6. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of Andrew Kiplagat

Chemaringo v 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.”

7. In applying the principles in *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* (*supra*), and considering the explanation for the delay and that the applicant is serving a 30 years sentence, I am inclined to exercise my discretion in his favour. Accordingly, the undated notice of appeal is deemed as duly filed. The memorandum of appeal and record of appeal shall be filed within 60 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.

