



REPUBLIC OF KENYA



KENYA LAW
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**Mukhwuna v Republic (Criminal Application E147 of 2024)
[2025] KECA 607 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KECA 607 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E147 OF 2024
LK KIMARU, JA
MARCH 28, 2025**

BETWEEN

PETER WAFULA MUKHWUNA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Peter Wafula Mukhwuna, the applicant herein, was tried and convicted of the offence of murder contrary to section 203 as read with section 204 of the Penal Code by the High Court sitting at Bungoma. The applicant was sentenced to suffer death. The judgment and sentence were rendered on 25th May, 2017. The applicant did not, at the time, appeal the decision.
2. The applicant now wishes to exercise his constitutional right of appeal. He has moved this Court by Notice of Motion seeking to be granted leave to lodge the appeal out of time. The applicant explained the reason for the delay in lodging the appeal in time was due to the fact that he was not supplied with the typed copies of the trial court's proceedings and judgment in time. He also stated that being poor, he was not able to pay the court fees required for him to secure the said typed proceedings and to file the appeal in time. The applicant annexed a draft copy of the memorandum of appeal which, in his view raises, serious issues which ought to be considered on appeal by this Court. The applicant is confident that if he is given a chance to prosecute the appeal, the appeal will be successful.
3. The respondent opposes the application. The respondent is not convinced by the reasons advanced by the applicant for his failure to lodge the appeal in time. The respondent is of the view that the delay is inordinate and the explanation given not satisfactory to convince the Court to exercise its discretion in the applicant's favour.
4. Although the applicant did not state the Rule of this Court that the application is predicated upon, it is clear to the Court that the applicant is invoking this Court's jurisdiction pursuant to Rule 4 of the



Court of Appeal Rules, 2022. The Rules grants this Court unfettered discretion to extend time for the doing or taking of any steps stipulated to be done within the period specified by the Rules. Of course, the discretion has to be exercised judicially and not capriciously or whimsically.

5. In the present application, the applicant explained the reason for the delay in lodging the appeal in time to be on account of the fact that he did not get the certified typed copies of the proceedings and judgment to enable him lodge the appeal in time. Although the respondent disputes this as an incredible reason, this Court is persuaded that while incarcerated, it may be difficult for a convict to pursue the typing and the release of the certified copies of proceedings from the trial court. This Court further, is of the considered view that, since the applicant has been sentenced to suffer death which is the severest punishment available in our law books, he should be given the chance to ventilate his appeal to the highest court for justice to be seen to be done.
6. In premises therefore, the applicant's application is allowed. He is granted leave to appeal out of time. He shall file and serve the notice of appeal within fourteen (14) days of today's date.
7. It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 28TH DAY OF MARCH, 2025.

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a true copy of original.

DEPUTY REGISTRAR.

