



**Namasaka v Republic (Criminal Application E146 of 2024)  
[2025] KECA 618 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KECA 618 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION E146 OF 2024  
LK KIMARU, JA  
MARCH 28, 2025**

**BETWEEN**

**GODFREY MUNENE NAMASAKA ..... 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 Bungoma (Ali Aroni, J) Dated 12th October, 2017 in HC CRA. Case No. 05 of 2009)*

**RULING**

1. Godfrey Munene Namasaka, 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 convicted and sentenced to suffer death on 12<sup>th</sup> October, 2017. The applicant did not lodge an appeal against that decision within the time prescribed by the Rules of this Court.
2. The applicant has now moved this Court by notice of motion essentially under Rule 4 of this Court's Rules seeking extension of time to lodge the appeal out of time. In his submission, the applicant explained that he was prevented from filing the appeal in time due to the fact that he was unable to obtain the certified typed copies of the proceedings in time. The applicant urged the Court to grant him the requisite leave so that he can exercise his right of appeal. He has annexed a copy of his draft memorandum of appeal, which in his view, is meritorious and he should be allowed to ventilate before this Court.
3. The application is opposed. The respondent submitted that the period of six (6) years delay was inordinate. No sufficient reasons had been put forward why the applicant delayed in lodging his appeal before this Court during the intervening period. The respondent urged the Court to disallow the application.



4. The applicant's application essentially seeks to invoke this Court's jurisdiction under Rule 4 of the *Court of Appeal Rules, 2022*. Under the said Rule, this Court has unfettered discretion to extend time for any steps to be taken within the period stipulated by the said Rules. The applicant explained that he was prevented from lodging the appeal in time due to the fact that he was not able to get certified typed copies of the proceedings and judgment in time. The respondent is not convinced by this explanation. They are of the view that that the period of delay is inordinate.
5. This Court is, however, persuaded by the reason given by the applicant for the delay in lodging the appeal in time. Being incarcerated in Prison, it is more likely than not that he was hampered physically from pursuing the typing and the certification of the proceedings so that the same may be ready to enable him lodge the appeal in time. Secondly, this Court is of the view that the applicant should be given a chance to ventilate his constitutional right of appeal before this Court in light of the fact that he is facing a serious charge that may result in death or incarceration for life.
6. In the premises therefore, the application is hereby allowed. The applicant is hereby granted leave to lodge his appeal out of time. The notice of appeal shall be filed and served within fourteen (14) days of today's date.
7. It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 28<sup>TH</sup> 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**

