



**Onyango v Republic (Criminal Appeal (Application)
E142 of 2024) [2025] KECA 721 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KECA 721 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL (APPLICATION) E142 OF 2024**

HA OMONDI, JA

APRIL 25, 2025

BETWEEN

CHARLES PATRICK OOKO ONYANGO APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for leave to file a record of appeal out of time
from the judgment of the High Court of Kenya at Siaya (R. E.
Aburili, J.) dated 30th November 2020 in HCCRA No. 86 of 2019)*

RULING

1. Charles Patrick Ooko Onyango, the applicant herein, was charged for the offence of manslaughter contrary to section 202 as read with 205 of the *Penal Code*. Upon trial, he was convicted and sentenced to serve 25 years imprisonment on 10th December 2019. The applicant was aggrieved by the outcome and moved to the High Court on appeal. In a judgment delivered on 30th November, 2020, upheld the conviction and affirmed the sentence, but directed that the 25 years imprisonment to be calculated from the date of arrest of the appellant before being released on bond on 28th August 2017.
2. Dissatisfied by that outcome, the applicant wishes to appeal to this Court, but realises that the time within which to file his appeal has lapsed. He has therefore filed this notice of motion dated 11th September 2024, seeking leave to file and serve his record of appeal out of time.
3. He explains that Counsel who represented him filed a notice, of appeal on 11th December, 2020 (though no copy has been availed); and it seems thereafter, he was pursuing the matter in person; and was therefore unable to keep track of his appeal. In the supporting affidavit of even dated 31st October 2022, the applicant also states that when he sent the notice of appeal, it was not delivered to court on time so as to be acted upon. He has also attached a draft memorandum of appeal.



4. In response, the respondent, through learned counsel, Mr. Okango, the Assistant Director of Prosecution, acknowledges that the power to extend time is a discretionary one, but is only exercisable by the Court upon a satisfactory reason being given; further, that the entire period of delay has to be stated and reasonably explained to the satisfaction of the court; and that the Court is obliged to also consider whether the intended appeal is arguable and has chances of success, hence not frivolous.
5. It is pointed out that the decision sought to be appealed was delivered on 30th November 2020, which is a period of about 4 years; and is described by the respondent as outright inordinate delay. Nonetheless, the respondent appreciates that the applicant is incarcerated, representing himself and that his notice of appeal was never delivered to court, and more importantly given the nature of the sentence being served, to wit, 25 years imprisonment for conviction of manslaughter, concedes the application for extension of time.
6. I have considered the application, the grounds in support thereof, submissions filed and bearing in mind that in an application of this nature, the court is allowed to exercise its discretion. The issue for determination is whether the applicant is deserving of the orders sought. The discretion that I am called to exercise in the determination of this application is unfettered and is provided under rule 4 of the Court of Appeal Rules which provides as follows:

The court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.

7. Rule 4 of the Court of Appeal Rules does not provide for factors the court ought to consider in an application for extension of time but courts have devised appropriate principles to be applied in achieving a 'just' decision in the circumstances of each case. The case of *Leo Sila Mutiso vs. Hellen Wangari Mwangi* [1999] 2 EA 231 which is the locus classicus, laid down the parameters as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”

8. In *Muringa Company Ltd vs. Archdiocese of Nairobi Registered Trustees*, Civil Application No.190 of 2019 observed that:

“Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.”



9. How long was the delay in this instance? 4 years (four). What was the reason? The applicant is a lay person incarcerated; and did not have the advantage of easily reaching the courts to establish the status of his appeal. He has attached a draft memorandum of appeal to demonstrate that the appeal is not frivolous.
10. There is no maximum or minimum period of delay set out under the law, however, the reason or reasons for the delay must be reasonable and plausible. For instance, in *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR, this Court stated:

“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.”

11. Under Rule 61 (1):

A person who desires to appeal to the Court shall give Notice of appeal in writing, which shall be lodged in six copies with the registrar of the superior Court at the place where the decision against which it is desired to appeal was given, within fourteen days after the date of that decision, and the notice of appeal shall institute the appeal.

Undoubtedly the notice of appeal ought to have been lodged within 14 days of the delivery of the decision which it seeks to appeal; that did not happen; nor has the applicant filed and served his record of appeal. I am satisfied that the reasons already alluded to posed a challenge to the applicant to act in a timely manner; and also, as pointed out by the respondent, the sentence the applicant is challenging is a long one which if his prayer is denied will occasion him great prejudice.

12. The upshot is that the application is merited and is allowed. The applicant is granted extension of time to file and serve the notice of appeal out of time within fourteen (14) days of today’s date. The applicant shall file and serve the respondent with the record of appeal within thirty (30) days upon service of the Notice of Appeal.

DATED AND DELIVERED AT KISUMU THIS 25TH DAY OF APRIL, 2025.

H. A. OMONDI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

