



**Simotwo v Republic (Criminal Application E095 of 2024)  
[2025] KECA 724 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KECA 724 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION E095 OF 2024  
LK KIMARU, JA  
APRIL 25, 2025**

**BETWEEN**

**DAN KIPROP SIMOTWO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for extension of time to file an appeal out of time from the Judgment of the High Court of Kenya at Bungoma (R.E. Ougo, J) Dated 13th June, 2023 in HC CRA. Case No. E100 of 2022)*

**RULING**

1. The applicant, Dan Kiprop Simotwo, was aggrieved by the decision of the first appellate court which dismissed his appeal in his absence for want of prosecution. He wishes to appeal against the said decision to this Court. He has filed an application essentially pursuant to Rule 4 of the Court of Appeal Rules, 2022 seeking to be granted leave to appeal out of time. He explains the reasons for the delay in lodging the notice of appeal out of time to the fact that he was not aware that his appeal had been determined in his absence. When he became aware, he timeously filed the present application. The applicant states that his intended appeal to this Court is meritorious. He should therefore be allowed to exercise his constitutional right of appeal.
2. The application was not opposed. The respondent filed written submission conceding to the application. The respondent noted that the period of delay was not inordinate.
3. This Court has unfettered discretion under Rule 4 of the *Court of Appeal Rules, 2022* to extend time for any steps to be taken beyond the period provided by the Rules. It was clear to this Court that the reason given by the applicant for the delay in lodging the notice of appeal in time is excusable. The applicant was not aware that the first appellate court had determined his appeal in his absence. When



the applicant became aware of the decision, he timeously filed the present application. It is evident that the applicant is diligent and wishes to pursue his right of appeal to this Court.

4. In the premises therefor, his application is allowed. He is granted leave to lodge and serve the notice of appeal out of time. He shall do so within fourteen (14) days of today's date. He shall file and serve the record of appeal within thirty (30) days upon service of the notice of appeal to the respondent.

**DATED AND DELIVERED AT KISUMU THIS 25<sup>TH</sup> DAY OF APRIL, 2025.**

**L. KIMARU**

.....

**JUDGE OF APPEAL**

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

DEPUTY REGISTRAR

