



REPUBLIC OF KENYA



**Murunga v Republic (Criminal Application E288 of 2024)  
[2025] KECA 800 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KECA 800 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CRIMINAL APPLICATION E288 OF 2024**

**JM NGUGI, JA**

**MAY 9, 2025**

**BETWEEN**

**LYDIA MURUNGA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Application for leave of extension of time to file an Appeal out of time in respect of the decision of the High Court of Kenya at Kiambu, (Mulwa, J.) dated 5th October, 2023 in HCCRA No. E033 of 2022)*

**RULING**

1. The applicant was tried and convicted at the Thika Chief Magistrates' Court of sexual assault contrary to section 5 (1) (ii) of the *Sexual Offences Act* No. 3 of 2006. She was sentenced to ten (10) years imprisonment. Her appeal on both conviction and sentence to the High Court was dismissed in its entirety in a judgment delivered on 5<sup>th</sup> October, 2023 (Mulwa, J.).
2. The applicant was dissatisfied with the judgment of the High Court. However, she failed to perfect her right of appeal timeously. Her present application, dated 13<sup>th</sup> September, 2024, seeks for extension of time to file and serve her appeal out of time. She is desirous of appealing against the whole of the High Court judgment.
3. The application is supported by an affidavit of the applicant sworn on 13<sup>th</sup> September, 2024. Pursuant to the directions by the Court, the applicant's counsel also filed written submissions dated 4<sup>th</sup> October, 2024.
4. There was no response by the Director of Public Prosecution (DPP). There is an affidavit of service on record showing that the application was served. There is also, on record, a Hearing Notice showing



that the hearing date was served on the respondent by the Court's registry. Being so satisfied about service on the respondent, the application will be considered unopposed.

5. The application is governed by Rule 4 of the Court of Appeal Rules. The Rule 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.”

6. In the present case, the applicant says that she was represented at the High Court by the firm of Oduk & Company Advocates. She instructed them to file an appeal. They drew up a Notice of Appeal which she says she had sight of. However, the applicant says that there soon developed a strain in her relationship between her and the advocates owing to her financial constraints. Consequently, her former advocates neither filed the Notice of Appeal nor the appeal. Since the applicant was incarcerated and is from a humble background, she says she was unable to instruct another counsel to act for her.

7. In her affidavit, the applicant explains that she used to do domestic work and had severe financial constraints. She was only fortunate when the firm now on record for her agreed to assist her pro bono upon learning of her predicament.

8. In her written submissions filed by her advocate, the applicant says that her appeal raises arguable points to warrant the attention of this Court. She cites the Supreme Court's decision in *Andrew Kiplagat Chemaringo v Paul Kipkorir* [2018] eKLR and this Court's decision in *Muringa Company Limited v Archdiocese of Nairobi Registered Trustees* [2020] KECA 761 (KLR) in support of her application.

9. The principles on which this Court may exercise the discretion to extend time under Rule 4 were set out in *Leo Sila Mutiso v Hellen Wangari Mwangi* 2 EA 231 in which it was held as follows:

“It is now settled that the decision whether to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this court takes in to account in deciding whether to grant an extension of time are, first the length of the delay, secondly the reasons 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.”

10. Similarly, in the *Muringa Company Limited Case* (Supra), Ouko, JA (as he then was), stated:

“Though wide and unfettered the discretion must be exercised judiciously and upon reason rather than arbitrarily, capriciously, on whim, or sentiment. (See *Julius Kamau Kithaka v Waruguru Kithaka Nyaga & 2 Others*, CA. No. 14 of 2013).

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. In considering the last principle, it must be borne in mind that it is not really the role of the



single judge to determine definitively the merits of the intended appeal. That is for the full court if and when it is ultimately presented with the appeal.”

11. In the present case, there is an admitted delay of about fifteen (15) months. The applicant has explained that she was financially handicapped and her then advocates failed to act on her instructions because she could no longer afford their fees.

She was in custody throughout, and he has credibly deponed that she had no financial reserves having engaged only in domestic work before. The applicant attached a Draft Memorandum of Appeal to her application. She is persuaded that the evidence presented in the case against her was so woefully contradictory that no reasonable tribunal would have convicted based on it and that it was an error for the learned Judge of the High Court to rule otherwise. She serving a ten- year sentence, by no means, a long sentence. In this circumstances, the pull of justice is in her favour: she has credibly explained the delay in filing the appeal and I find her delay excusable. The appeal she intends to pursue is, also, arguable.

12. Consequently, I am satisfied that the applicant is entitled to the deployment of judicial discretion under Rule 4 of the Court of Appeal Rules for the extension of time. The application dated September 13, 2024 is allowed. The applicant is permitted to file and serve a Notice of Appeal within seven (7) days of the date hereof.

13. There will be no orders as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF MAY, 2025.**

**JOEL NGUGI**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

