



**Koech v Republic (Criminal Application E242 of 2024)  
[2025] KECA 846 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KECA 846 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E242 OF 2024**

**WK KORIR, JA**

**MAY 9, 2025**

**BETWEEN**

**BENARD LANG'AT KOECH ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for leave to file an appeal out of time against the judgment of the High Court of Kenya at Narok (Bwonwonga, J.) dated 5th April 2018 in HCCRC No. 25 of 2017)*

**RULING**

1. Benard Lang'at Koech, the applicant herein, was convicted and sentenced to 50 years imprisonment for the offence of murder contrary to section 203 as read with 204 of the Penal Code. In the notice of motion dated 16<sup>th</sup> August 2024, he seeks an enlargement of time to file an appeal on the grounds that he was not supplied with the judgment and the proceedings in time, hence the delay in filing his appeal. In his supporting affidavit, he additionally avers that his appeal has high chances of success and prays that his application be allowed. He has also annexed a memorandum of appeal highlighting seven grounds upon which his intended appeal is premised.
2. The respondent did not reply to the application. This application was heard in chambers on 20<sup>th</sup> March 2025, when both the applicant and the respondent had filed their respective submissions.
3. In his submissions, the applicant reiterated the grounds in support of the application. He submitted that he could not file his appeal because he was not supplied with the judgment and proceedings of the High Court. He asserted that his appeal has high chances of success and referred to Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet [2018] eKLR in support of the proposition that the length of the delay is not definitive in the determination of an application for extension of time as it all depends on the circumstances of the case and the reasons for the delay. The applicant relied on Leo Sila Mutiso v Helen Wangari NRB Civil Application No. 251 of 1997 to submit that in considering an application



for extension of the time for filing an appeal, the Court will look at the length of the delay, the reason for the delay, the chances of the appeal succeeding and the prejudice to the respondent were the application to be allowed. He consequently urged that the application be allowed as prayed.

4. Senior Assistant Director of Public Prosecutions, Mr. Omutelema, filed submissions dated 3<sup>rd</sup> January 2025, asserting that the delay in bringing the application was inordinate and unexplained. He nevertheless conceded to the application on the grounds that the applicant is serving a long jail term and this is his first appeal.
5. I have considered the application, the supporting affidavit and the submissions by the parties. The applicant has invoked rule 4 of the Court of Appeal Rules, and the applicable principles are that the period of the delay should be declared and explained for an order of enlargement of time issue. I am also alive to the decision of this Court (J. Mohammed, JA) in *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* (*supra*) that there is no minimum or maximum set period of delay in law, but that any delay should be satisfactorily explained as it is only such an explanation that then unlocks the door shut due to lapse of time.
6. In this application, there has been a delay of approximately 6 years and 4 months. Much as the applicant is serving a lengthy sentence and the intended appeal is his first appeal, the reason given for the delay is not plausible. The applicant, without demonstrating the steps he took to follow up on the proceedings, blames the trial court for the delay in supplying him with copies of the proceedings and judgment. Six years is not a short period of time and it is unbelievable that the applicant sat waiting for the proceedings for that length of time without taking any action. I therefore find the delay not only inordinate but unexplained. It was incumbent upon the applicant to explain the delay in bringing the instant application but he has failed to do so.
7. Consequently, I decline to exercise my discretion in favour of the applicant. His application for extension of time to file an appeal is therefore dismissed.

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

**W. KORIR**

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**JUDGE OF APPEAL**

I certify that this is a True copy of the original

**DEPUTY REGISTRAR**

