



**Lutta alias Daddy v Republic (Criminal Appeal (Application)  
E132 of 2024) [2025] KECA 820 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KECA 820 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPEAL (APPLICATION) E132 OF 2024**

**HA OMONDI, JA**

**MAY 9, 2025**

**BETWEEN**

**JOEL OGOLLA LUTTA ALIAS DADDY ..... 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 Siaya (R. E. Aburili, J.) dated 31st March 2021 in HCCR No. 19 of 2019)*

**RULING**

1. Joel Ogolla Lutta alias Daddy, the applicant herein was convicted in the High Court at Siaya (Aburili, J.) for the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#), and sentenced to 35 years imprisonment on 31<sup>st</sup> March 2021. He is aggrieved by the outcome and is desirous of appealing against the decision, but realises that the time within which to file his appeal has lapsed. He has therefore filed this notice of motion, seeking leave to file and serve his appeal out of time.
2. In the undated affidavit sworn by the applicant, he explains that the delay was due to the fact that his relatives had promised to instruct an advocate to represent him, but were unable to do so due to financial constraints. Realizing his impecunious status, he filed an application for waiver of court fees required for the preparation of the record of appeal, describing himself as a pauper. In a ruling dated 24<sup>th</sup> November, 2023, this Court directed as follows:

“In the case before me, I would simply declare that the applicant has a right to have his Record of Appeal prepared without the imposition of any fine. If, as is likely, he was delayed in filing his appeal or Notice of Appeal, the applicant shall file an appropriate application for extension of time to be considered by this Court under Rule 4 of the Court of Appeal Rules”



It apparent that taking a cue from this, the applicant, to remedy the situation, has filed this application.

3. The respondent did not file any response in reply nor written submissions. The applicant has also not filed any written submissions, but his application clearly communicates his intent. I recognise that he is a lay person; and may not be familiar with the intricacies of arguing his application by way of written submissions.
4. The decision sought to be appealed was delivered on 31<sup>st</sup> March, 2021, which is a period of about 4 years; and can aptly be described as outright inordinate delay. Nonetheless, the respondent is incarcerated, representing himself and sought waiver of court fees, the outcome being delivered in November 2023. That closes the gap of delay to 2 years; but more importantly, given the nature of the sentence being served, to wit, 35 years imprisonment for conviction of murder the application for extension of time.
5. 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.

6. 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.”

7. 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.”



8. In the instant case, the need to protect the applicant's opportunity to fully agitate his case, taking into consideration the length of the sentence he is serving, tilts the scales of discretion in his favour. 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.

9. 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 the sentence the applicant is challenging is a long one which if his prayer is denied will occasion him great prejudice.

10. 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 9<sup>TH</sup> DAY OF MAY, 2025.**

.....

**H. A. OMONDI**

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

