



REPUBLIC OF KENYA



KENYA LAW
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**Rotich v Republic (Criminal Application E246 of 2024)
[2025] KECA 847 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KECA 847 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E246 OF 2024**

WK KORIR, JA

MAY 9, 2025

BETWEEN

ROBERT TIROP ROTICH 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 Kericho (M. Ang'awa & Emukule, JJ.) dated 4th July 2009 in HCCRA No. 1079 of 2007)

RULING

1. Robert Tirop Rotich's appeal before the High Court against conviction and death sentence for robbery with violence contrary to section 296(2) of the *Penal Code* was dismissed on 4th July 2009. In the notice of motion dated 19th December 2024, he seeks an enlargement of time for filing an appeal on the ground that he could not secure a copy of the judgment and the typed proceedings in time. The application is supported by his affidavit, in which he avers that he has an arguable appeal that is likely to succeed and the State will suffer no prejudice if time is enlarged.
2. When the application came up for hearing, none of the parties had filed submissions. Be that as it may, the parameters for considering an application under rule 4 of the *Court of Appeal Rules* are well settled. An applicant must declare the whole period of delay and sufficiently explain the delay. Additionally, as was appreciated by this Court (J. Mohammed, JA) in *Andrew Kiplagat Chemarango v Paul Kipkorir Kibet* [2018] eKLR, even though there is no definitive maximum or minimum period of delay, it is only a satisfactory explanation that will unlock the doors shut by lapse of time.
3. The delay herein is approximately 15 years and 5 months. There is no doubt that the delay is inordinate. The reason advanced by the applicant for the inability to procure the proceedings and judgment is not supported by any evidence showing the attempts, if any, made to secure the record. Blaming the High



Court for failure to supply proceedings and judgment for over 15 years, is in my view, unconvincing and unbelievable. In the circumstances, I therefore decline to exercise my discretion in the applicant's favour. Consequently, the applicant's notice of motion dated 19th December 2024 is dismissed.

DATED AND DELIVERED AT NAKURU THIS 9TH 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

