



**Xiaoting v Republic (Criminal Application E287 of 2024)  
[2025] KECA 772 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KECA 772 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CRIMINAL APPLICATION E287 OF 2024**

**JM NGUGI, JA**

**MAY 9, 2025**

**[IN CHAMBERS]**

**BETWEEN**

**QIU XIAOTING ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Application for Extension of Time to serve the Notice of Appeal out of time in an intended Appeal from the Judgment and Decree of the High Court of Kenya at Nairobi, (Mutende, J.) dated 29th May, 2023 in HCCRA No. E029 of 2021)*

**RULING**

1. The applicant is a Chinese national. She was arraigned, tried and convicted of the offence of trafficking in psychotropic substances contrary to the [Narcotics and Psychotropic Substances \(Control\) Act](#) at the Chief Magistrate's Court, JKIA. She was sentenced to pay a fine of Kshs. 40 Million and, in default, to serve a sentence of one-year imprisonment; and, in addition, to serve a term of eighteen (18) years imprisonment. Additionally, the trial court ordered that she be repatriated back to her country of origin after she serves her sentence.
2. The applicant was dissatisfied with the conviction and sentence and appealed to the High Court. During the hearing of the appeal, she abandoned her challenge on conviction and only pursued the appeal against the sentence. In a judgment dated and delivered on 29<sup>th</sup> May, 2023, the High Court (L.N. Mutende, J.) affirmed the sentence imposed but varied the date from which the time of imprisonment was to be computed so as to consider the time spent in custody by dint of section 333(2) of the [Criminal Procedure Code](#).
3. In the application before me dated 17<sup>th</sup> September, 2024, the applicant seeks extension of time to appeal against the judgment of the High Court. The application is supported by an affidavit of the applicant



sworn on 17<sup>th</sup> September, 2024. 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 by the Court's registry. Being so satisfied about service on the respondent, the application will be considered unopposed.

4. 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.”
5. In the present case, the applicant says that she has been incarcerated at Langata Women's Prison and had no legal representation. As a foreigner, she says that she felt helpless to manoeuvre through the legal system in order to perfect her right of appeal. She only managed to bring the present application when she obtained the assistance of legal counsel on record pro bono through a Chinese friend. She pleads that the delay in bringing the application was not advertent or disinterest. She argues that she is desirous of appealing against both the sentence of imprisonment and the repatriation order. She is particularly concerned about the repatriation order because, she says, upon being returned to China, she would be immediately executed given the nature of the offence for which she was sentenced. Through written submissions dated 17<sup>th</sup> October, 2024, the applicant argues that the sentence imposed on her is manifestly excessive and, in particular, that the repatriation order was unnecessary, perhaps, unlawful. She hopes to take up both these matters on appeal before this Court.
6. 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.”
7. The impugned judgment was delivered on 29<sup>th</sup> May, 2023. The present application was lodged on 17<sup>th</sup> September, 2024. The delay is a little more than 15 months. That is, admittedly, a long delay. However, the applicant has plausibly explained that she is a foreigner, incarcerated in Kenya. She, no doubt, faced severe challenges navigating the prison and our legal system without legal counsel. The delay is understandable. Her appeal is, also, not idle, especially her concern about the repatriation order which she says, in the circumstances of her case, was unnecessary and would lead to the violation of her right to life. At a minimum, she deserves an opportunity to present her arguments for consideration by this Court. Differently put, I find that she has an arguable appeal.
8. 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 17<sup>th</sup> September, 2024 is allowed. The applicant is permitted to file and serve a Notice of Appeal within seven (7) days of the date hereof.
9. 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.**

