



**Andere v Republic (Criminal Application E170 of 2024)
[2025] KECA 1399 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1399 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E170 OF 2024
MSA MAKHANDIA, JA
JULY 31, 2025**

BETWEEN

JOHN ANDERE APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to file an appeal out of time)

RULING

1. John Andere, [“the applicant”] herein, filed this miscellaneous criminal application dated 9th December, 2024, seeking leave of court to extend time within which to file and serve his Record of Appeal. He had been charged, tried, convicted and sentenced on 29th of March, 2022. He now wishes to appeal that decision to this Court. However, the time for doing so under the rules of this Court which is time bound has long lapsed. It is for that reason that he has found it necessary to lodge and prosecute the instant application which is permissible by virtue of Rule 4 of this Court’s Rules.
2. The applicant explains the delay in filing the appeal on time on the grounds that while in custody after being convicted and sentenced, he instructed paralegals within the prison facilities to help him to file an appeal within the stipulated time, but the paralegals failed to do so. He claims that he became aware of the failure when the period within which he ought to have lodged the appeal had long elapsed. The applicant claims that the delay was therefore excusable and occurred in utmost good faith. He also claims that even though he was diligent enough in making efforts to appeal, he was unable to do so because of circumstances beyond his control, owing to the fact that he is in prison and relies on the services of the paralegals.
3. The applicant contends that the intended appeal has a high chance of success and that the interest of uustice would be best served by allowing the application. He further contends that he stands to suffer



irreparable injustice if this application is not granted and that the prosecution shall not suffer any prejudice at all if this application is allowed.

4. The applicant also seeks comfort in Article 48 of *the Constitution* of Kenya, which guarantee him the right to Access Justice which includes the right of an appeal to higher court seeking a review for the orders issued by lower court in hierarchy upon determination of the justiciable issues. He reiterates that the exercise of discretion donated to the court in applications of this nature is unfettered save that it has to be considered within the scope and approach more pronounced in the realm of Civil law. In support of all these assertions, the applicant relied on the case of Republic v Kiprop [Miscellaneous Criminal Case E041 of 2023] [20231 KEHC 20679 [KLR], wherein it was stated that invariably, what should matter to the court is to serve substantive justice through judicious exercise of discretion which is to be guided by the following considerations:
 1. whether the delay is an abuse of the court:
 2. whether the delay is inordinate and inexcusable:
 3. whether the delay is one that gives rise to a substantial risk to fair trial in that it is not possible to have a fair trial of issues in action or causes or likely to cause serious prejudice to the Defendant.
 4. what prejudice will the dismissal cause to the plaintiff. By this test, the court is not assisting the indolent, but rather it is serving the interest of justice, substantive justice on behalf of all the parties
5. It is therefore the applicant's position that this application meets the above threshold, has been made in utmost good faith and is not made with the intention to abuse the process of court whatsoever. The delay in filing the appeal was caused by factors and situations beyond his control, though, he diligently made efforts to ensure that the appeal was filed within the stipulated time. He accordingly pleaded with me to allow the application.
6. When the application was served on the respondent, it was gracious enough to concede to it. In doing so it stated thus:

“That upon perusal of the application and the contents of the supporting affidavit thereto, we do not oppose it. We opine that the judgment having been delivered on 20th December 2023, the delay in filing the Notice of Appeal is not inordinate given the reasons adduced in the Supporting Affidavit Consequently, we have no objection to the application for leave to appeal out of time.”
7. This being the case therefore, I would allow the application as prayed. For the avoidance of doubt, the applicant is granted leave to file and serve the notice and record of appeal out of time. He should do so within the next forty-five [45] days from the date of this ruling.

DATED AND DELIVERED AT KISUMU THIS 31ST DAY OF JULY, 2025.

ASIKE-MAKHANDIA

JUDGE OF APPEAL

I certify that this is a true copy of the original

Deputy Registrar

