



**Mokua v Republic (Criminal Application E168 of 2024)  
[2025] KECA 1425 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1425 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION E168 OF 2024  
MSA MAKHANDIA, JA  
JULY 31, 2025**

**BETWEEN**

**VINCENT MOKUA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for extension of time)*

**RULING**

1. Vincent Mokua, (“the applicant”) herein, was tried, convicted and sentenced to suffer death for the offence of robbery with violence contrary to section 296(2) of the *Penal Code* in the Chief Magistrate’s Court at Kisumu. He subsequently lodged an appeal to the High Court of Kenya at Kisumu. Upon hearing, the 1<sup>st</sup> appellate court dismissed the appeal in its entirety.
2. Dissatisfied with the 1<sup>st</sup> appellate court’s decision, the applicant wishes to prefer a second, and perhaps last appeal in this court. However, he has been unable to do so since time for undertaking such an exercise under this Court’s Rules has long expired. He was required to file Notice of Appeal within 14 days following the delivery of the judgment and thereafter 60 days to file the record of appeal. It is for this reason that the applicant has mounted the instant application. Such an application is permissible under Rule 4 of the *Court of appeal Rules*. The rule grants this Court unfettered discretion to extend time for as long as the applicant can explain the delay and the reasons thereof to my satisfaction.
3. Explaining the delay, the applicant states that he had tried to lodge this application severally through the Kisumu High Court but all has been in vain. Secondly, that he was unable to file the appeal on time because he was never provided with the High Court’s judgment and proceedings, hence, limiting his ability to prepare the record of appeal in time. Again, the applicant approaches this Court seeking to exercise his constitutional right under Article 22 of the *Constitution* of Kenya which provides that;



1. Every person has the right to institute in court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
4. The applicant takes the view that in the event that the application is denied, then his right under Article 50(2)(q) of the Constitution, 2010, will be infringed. The article provides that;
  - (2) Every accused person has the right to a fair trial, which includes the right, if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
5. Lastly, the applicant relies on the following authorities in support of the above assertions. Wanyoike Kariuki v Republic COACRAPPL E060 OF 22024 and Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet [2018] eKLR.
6. The application was purportedly opposed by the respondent not through a replying affidavit but through written submissions. Ideally, this is not a document worthy of consideration as a pleading. Submissions cannot take the place of pleadings. In effect therefore, the application is for all intents and purposes unopposed. But again, even if I was to consider what is stated in those submissions in opposition to the application, I do not think it will tilt my mind regarding the fate of the application.
7. In its submissions, the respondent takes the view that none of the grounds advanced in support of the application explain why the applicant is seeking the extension of time; that 7 years delay is inordinate and has not been sufficiently explained and lastly, that no substantive ground(s) of appeal have been advanced to enable me grant the prayers sought.
8. I have carefully considered the application, the supporting affidavit, respective submissions by the parties and the law. Rule 4 of the Court of Appeal Rules, 2022, on which this application is anchored provides *inter alia*;
  4. The Court may, on such terms as may be 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.
9. This provision has been the subject of interpretation in various decisions of this Court. For instance, in the case of *Sila Mutiso v Helen Wangari*, (NRB) Civil Application No. 251 of 1997, this Court outlined the considerations to be taken into account in an application of this nature being;

“... 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.”
10. And in the case of Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet (*supra*), the court opined that;

“...the law does not set out any minimum or maximum period of delay. All it states is that the delay should be satisfactorily explained. A plausible and satisfactory explanation for the delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”
11. Yes, there is a delay of about 7 years preceding the filing of the instant application. However, that delay has been sufficiently explained to my satisfaction. As already stated, the depositions of the applicant have not been controverted at all by the respondent. In the absence of the record of the High Court and judgment being availed to the applicant, I cannot see how the applicant would have been expected to



prepare, file and serve the notice as well as record of appeal in time on the respondent. It is not also lost on me that the applicant is in prison custody hence, his interaction with the outside world is limited and not as seamless as one would expect with ordinary mortals. Contrary, to the submissions of the respondent, a casual glance of the proposed grounds of appeal does not paint a frivolous appeal.

12. I also appreciate that the applicant has undoubted constitutional right to exhaust the appellate process which right should not be sacrificed at the altar of the respondent's convenience. Ultimately the applicant is facing a death sentence, and I cannot appreciate the prejudice that the respondent will incur in the event that the application is granted.
13. In the result I allow the application with the consequence that the applicant is granted leave to file both the notice and record of appeal out of time. The applicant should do so within the next forty- five (45) days from the date of this ruling.

**DATED AND DELIVERED AT KISUMU THIS 31<sup>ST</sup> DAY OF JULY, 2025.**

**ASIKE-MAKHANDIA**

.....

**JUDGE O APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**

