



**Miano v Republic (Criminal Miscellaneous Application
E002 of 2024) [2024] KECA 504 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KECA 504 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL MISCELLANEOUS APPLICATION E002 OF 2024**

WK KORIR, JA

APRIL 26, 2024

BETWEEN

DANIEL NJIHIA MIANO APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for extension of time to file a notice of appeal
to the decision of the High Court at Nakuru (W. Ouko, & H.A.
Omondi, JJ.) delivered on 29th October, 2012 in HCCRA 393 of 2010)*

RULING

1. By way of a notice of motion dated 6th March 2024 the applicant, Daniel Njihia Miano, has moved the Court pursuant to rule 4 of the Court of Appeal Rules seeking an order enlarging the time for filing a notice of appeal against the judgment of the High Court issued on 29th October 2012 in Nakuru HCCRA No. 393 of 2010.
2. The applicant's case is that he was sentenced by the trial Court to serve 14 years in prison. However, upon appealing to the High Court, the sentence was enhanced and he was condemned to suffer death. It is his deposition that as he was acting in person and incarcerated he could not trace the High Court file and obtain the judgment within a reasonable time. He avers that it is in the interest of justice to have his appeal against the sentence heard so that the Court can hand him an appropriate sentence.
3. The application was not opposed.
4. The application was heard on 17th April 2024 in chambers through written submissions. Messers Muthoni Nyuguto & Co. Advocates filed submissions dated 9th April 2024 urging the applicant's case. Counsel referred to the case of *Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR to highlight the factors to be taken into account in



the determination of an application for extension of time. Counsel submitted that the intended appeal is arguable as the circumstances of the case did not warrant the imposition of the death sentence. As to whether the delay was inordinate, it was counsel's submission that the delay was occasioned by the fact that the applicant was incarcerated and was also acting in person hence he was unable to access the High Court file in good time. Counsel further urged that considering that the sentence the applicant intends to appeal is the death penalty, it cannot be said that the delay is inordinate.

5. In the submissions dated 15th April 2024, the Senior Assistant Director of Public Prosecutions, Mr. Omutelema, indicated that the respondent was not opposed to the application due to the enhanced sentence the applicant is serving.
6. In an application brought under rule 4 of the rules of this Court, I am to exercise discretion based on known principles that have been established by this Court and the Supreme Court. The principles have been highlighted in several decisions including that of the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR and the one by this Court in *Imperial Bank Limited (In Receivership) & Another v. Alnashir Popat & 18 others* [2018] eKLR. Adhering to the pronouncements in the stated decisions, and considering that the application is not opposed, I will only determine the questions as to whether the delay has been explained and whether the applicant has an arguable appeal.
7. Ordinarily, an application for extension of time has no timelines as any given period of delay can be excused so long as the applicant satisfactorily explains the delay - see *Andrew Kiplagat Chemaringo v. Paul Kipkorir Kibet* [2018] eKLR. In this case, the impugned judgment was delivered on 29th October 2012 yet this application is dated 6th March 2024. It is the applicant's explanation that owing to the fact that he was incarcerated and he did not have counsel, he was unable to access the impugned judgment in good time to enable him file an appeal. Ordinarily, a delay of over 11 years would be deemed inordinate and inexcusable. This would be exacerbated by the implausible claim by the applicant that his incarceration hampered the acquisition of the proceedings considering that convicts who desire to appeal, even when not represented, are regularly supplied with proceedings. The only saving grace in this application is that the applicant's sentence was enhanced to death by the first appellate court from the 14 years imposed by the trial court. The fact of the enhancement of the sentence and the question as to whether that enhancement complied with the law renders the applicant's intended appeal arguable. Therefore, based on the arguability of the appeal alone, I am inclined to find that the applicant has made a strong case for enlargement of time.
8. In the end, I find merit in the notice of motion dated 6th March 2024. The same is hereby allowed on the following terms:
 - a. Time for filing the notice of appeal is hereby extended;
 - b. The applicant is granted 14 days from the date of the delivery of this ruling to file his notice of appeal;
 - c. The timelines for all the other activities consequent to the filing of a notice of appeal shall be in accordance with the Court of Appeal Rules; and
 - d. Time will run from the date of this ruling.

DATED AND DELIVERED AT NAKURU THIS 26TH DAY OF APRIL, 2024

W. KORIR

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

