



**Kariuki v Republic (Criminal Appeal (Application)
E012 of 2024) [2024] KECA 898 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KECA 898 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL (APPLICATION) E012 OF 2024**

JM MATIVO, JA

JUNE 20, 2024

BETWEEN

STEPHEN KIHUNGI KARIUKI APPELLANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to file an appeal out of time from the Judgment of the High Court of Kenya at Naivasha (H.I. Ong’udi, J.) dated 3rd November, 2023 in HCCA No. E024 of 2021 Criminal Case No. 224 of 2019)

RULING

1. The application before the Court is undated. The main prayer is for leave to be granted to the applicant to appeal out of time against the judgment issued in HCCA No. 024 of 2019 on November 3, 2023.
2. The applicant, Stephen Kihungi Kariuki, was arraigned, and tried jointly with others not before the Senior Principle Magistrate Court in Criminal Case No. 224 of 2019 at Engineer with four counts of the offence of robbery with violence contrary to section 296 (2) of the *Penal Code*. In a judgment dated March 18, 2021, he was acquitted on one count and convicted and sentenced to 30 years imprisonment on each of the remaining three counts. The sentences were to run concurrently.
3. The applicant’s appeal to the High Court was dismissed on both conviction and sentence. The applicant failed to lodge his notice of appeal within the statutory-stipulated time of fourteen (14) days. His present application invokes rule 4 of the *Court of Appeal Rules* to enlarge the time he is permitted to file his appeal.
4. It is the applicant’s case that the reason for the delay in filing his appeal on time was because he was awaiting his relative to appoint an advocate to represent him but due to financial constraints the same was never realized.



5. In response to the application vide written submissions dated June 18,2024, Mr. Omutelema Senior Assistant Director of Public Prosecution has amiably conceded to the leave application pointing to the serious offence charge; the long imprisonment sentence and the fact that the delay is not inordinate considering that the applicant is in custody.

6. It is trite that this Court has unfettered discretion under Rule 4 of the Court Rules, to extend time for the doing of any act under the Court Rules. This discretionary power, however, is judicial in nature and must be confined to the rules of reason and justice. The Supreme Court in Nicholas Kiptoo Arap Korir Salat vs. I.E.B.C. & 7 others (2014) eKLR, thus:

- “ 1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

7. I have considered the application and the supporting affidavit and the respondent’s submissions in concession of the motion. I have also read the attached Memorandum of Appeal setting out grounds which, for an intending appellant exercising their undoubted right of a second appeal, cannot be said to be inarguable. I am satisfied that the applicant has met the threshold for the exercise of discretion by this Court. Consequently, I allow the undated application for the extension of time. The record of appeal shall be filed and served within 30 days hereof and the appeal thereafter placed before the court for hearing.

8. Orders accordingly.

DATED AND DELIVERED AT NAKURU THIS 20 OF JUNE, 2024.

J. MATIVO

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

