



**Lenkilili v Republic (Criminal Application E016 of 2024)  
[2024] KECA 926 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 926 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E016 OF 2024  
WK KORIR, JA  
JULY 26, 2024**

**BETWEEN**

**MICHAEL LENKILILI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for leave to file a Notice of Appeal out of time against the judgment and decree of the High Court at Naivasha (H.I. Ong’udi, J) issued and dated 3rd November 2023 in HCCRA No. E025 OF 2024)*

**RULING**

1. The applicant, Michael Lenkilili, seeks enlargement of time to file a notice of appeal against the judgment delivered by Ongundi J. on 3<sup>rd</sup> November 2023 in Naivasha High Court Criminal Appeal No E025 of 2024. The grounds in support of the plea for enlargement of time are that the applicant was charged and convicted of robbery with violence contrary to section 296(2) of the [Penal Code](#). Subsequently, he was sentenced to serve 90 years’ imprisonment. Upon conviction, he relied on his family to secure him an advocate but that did not come to fruition due to lack of finances hence his failure to file the notice of appeal within the prescribed period.

2. The respondent did not file a replying affidavit in this matter.

When the application was placed before me for hearing in chambers on 18<sup>th</sup> July 2024, the respondent had filed written submissions. It was the submission of the respondent’s counsel that even though the delay in filing the notice of appeal was inordinate, the length of the prison sentence imposed upon the applicant warrants a hearing of the applicant’s intended appeal and the respondent was therefore not opposed to the application.



3. The power to enlarge time as sought in this application is donated by rule 4 of the *Court of Appeal Rules*. The principles already established through caselaw for the exercise of the discretion includes the period of and reason for the delay and the chances of the appeal succeeding.
4. In this application, the impugned judgment was delivered on 3<sup>rd</sup> November 2023 while the present application, though undated is being heard in July 2024. I would therefore estimate the period of delay to be about 7 months. The reasons given for the delay are a lack of finances and failure to secure the services of an advocate. Considering that the applicant was sentenced to 90 years imprisonment, the period of delay of about 7 months, in my view, is not inordinate. The reasons tendered by the applicant are also plausible and I find them to be satisfactory.
5. Additionally, I have also read through the annexed draft memorandum of appeal which raises 6 grounds. Having read through them, I find that those grounds deserve a hearing before the Court.
6. In the end, I am satisfied that the applicant has met the threshold for the exercise of discretion by this Court to enlarge time. The Notice of Appeal previously filed by the applicant is therefore deemed to have been duly filed. The time for all the other activities consequent to the filing of a notice of appeal shall be as per the rules of the Court and time will run from the date of this ruling.

**DATED AND DELIVERED AT NAKURU THIS 26<sup>TH</sup> DAY OF JULY, 2024**

**W. KORIR**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

