



**Kariuki v Republic (Criminal Appeal (Application)
E026 of 2024) [2024] KECA 771 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KECA 771 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL (APPLICATION) E026 OF 2024**

JM MATIVO, JA

JULY 4, 2024

BETWEEN

TERRA MUGUNA KARIUKI APPLICANT

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 Nyahururu (Kariuki, J.) dated 23rd September 2021 in HCCRA No. E002 of 2020)

RULING

1. The application before the Court is dated April 16, 2024. The main prayer is for leave to appeal out of time against the judgment issued in HCCRA No. E002 of 2020 on 23rd September 2021. The applicant, Terra Muguna Kariuki, jointly with three others were charged and tried before the Chief Magistrate's Court in Criminal Case No. 2197 of 2016 at Nyahururu with the offence of robbery with violence contrary to section 295 as read with 296(2) of the Penal Code. They were convicted and sentenced to death.
2. The applicant's appeal against conviction and sentence was dismissed and the sentence by the Chief Magistrate affirmed. Even though aggrieved, 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, 2022 to enlarge the time he is permitted to file his appeal.
3. The applicant who is incarcerated and appears in person, vide his undated supporting affidavit stated that he was unable to trace the lower court proceedings and as a result his appeal could not be filed on time. Be that as it may, the applicant maintained that his appeal has high chances of success. In their submissions dated 3rd July 2024, the respondent supports the application.



4. I have considered the application, the notice of appeal, memorandum of appeal, the undated supporting affidavit. It is evident that there has been a ten (10) years delay in filing an appeal against the judgment of the High Court. The applicant's position is that the delay was occasioned by the lack of records.
5. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, and stated as follows:

“the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for 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.”
6. In applying the principles in *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* (*supra*), and considering that the applicant is serving a life sentence, I am inclined to exercise my discretion in his favour. I allow the application and order that the undated notice of appeal and memorandum of appeal dated 16th April 2024 be and is hereby deemed as duly filed. The Record of Appeal shall be filed within 60 days from today.

DATED AND DELIVERED AT NAKURU THIS 4TH OF JULY, 2024.

J. MATIVO

JUDGE OF APPEAL

.....

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

Signed

DEPUTY REGISTRAR

