



**Sandera v Republic (Criminal Appeal (Application)
E025 of 2024) [2024] KECA 782 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KECA 782 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL (APPLICATION) E025 OF 2024**

JM MATIVO, JA

JULY 4, 2024

BETWEEN

TOBIKO OLE SANDERA APPLICANT

AND

REPUBLIC RESPONDENT

(application for leave to file an appeal out of time from the Judgment of the High Court of Kenya at Nairobi dated 5th May 2004 in Nairobi HCCRA No. 1080 of 1998)

RULING

1. The application before me is undated. The main prayer sought is for leave to be granted to the applicant to appeal out of time against the judgment issued in HCCRA No. 1038 of 1998 on 5th May 2004. The applicant, Tobiko Ole Sandera, was charged and tried before the Chief Magistrate's Court in Criminal Case No. 717 of 1997 at Naivasha with the offence of robbery with violence contrary to section 295 as read with 296(2) of the Penal Code. He was convicted of the charge and sentence to death.
2. The applicant's appeal against conviction and sentence was dismissed and the sentence by the Chief Magistrate upheld. 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 to enlarge the time he is permitted to file his appeal.
3. The applicant who is incarcerated and appears in person, vide his supporting affidavit dated 10th August 2023, he stated that he had the intention to appeal against the judgment of the High Court but he was never supplied with the original trial court records. Nevertheless, the applicant maintained that his appeal has high chances of success and that the respondent will not be prejudiced if the orders sought are granted.



4. Vide directions issued by this Court on 27th June 2024, the parties were directed to file submissions before the hearing date. As at the time of writing this ruling on 4th July 2024 at 0938 HRS, the respondent is yet to comply with the Court's directions. Rule 58

(2) of the Court of Appeal Rules stipulates:

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“(2) If the applicant appears or complies and the respondent fails to appear or comply, the application shall proceed in the absence of the respondent, unless the Court sees fit to adjourn the hearing..”

5. I have considered the application, the notice of appeal, memorandum of appeal, the supporting affidavit dated 10th August 2023. It is evident that there has been a delay of 19 years in filing the appeal against the judgment of the High Court. The applicant's position is that the delay was occasioned by the failure by the trial court to furnish him with the original trial court record.

6. 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.”

7. In applying the principles in *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* (supra), and considering that the applicant is serving a death sentence, I am inclined to exercise my discretion in his favour. The notice of appeal dated 10th August 2023 and the undated memorandum of appeal are 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

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

