



**Kuyo v Republic (Criminal Application E037 of 2024)
[2024] KECA 1306 (KLR) (20 September 2024) (Ruling)**

Neutral citation: [2024] KECA 1306 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E037 OF 2024
S OLE KANTAI, JA
SEPTEMBER 20, 2024**

BETWEEN

DICKSON KESWE KUYO APPLICANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the Judgment of the High Court at Narok (Bwonwonga, J.) delivered on 11th December, 2019 in H.C. Criminal Appeal No. 138 of 2017)

RULING

1. There is not much information in the Motion by the applicant, Dickson Keswe Kuyo. He says in the relevant part that he could not appeal on time because he was not supplied with judgment of the High Court on time to enable him appeal on time. The affidavit in support repeats that contention without giving any details on when his appeal to the High Court was concluded; when he applied for proceedings or when the same were availed to him.
2. I got more information from the respondent’s written submissions for which I am grateful.
3. The appellant was convicted by a magistrate’s court for the offence of robbery with violence contrary to section 296(2) Penal Code and was sentenced to life imprisonment. His appeal to the High Court was dismissed.
4. The respondent states in submissions:

“It is the Respondent’s submission that the Applicant’s sentence is lengthy. The delay in filing his appeal is inordinate. However, given the nature of the sentence, i.e. Life Imprisonment, the Respondent does not oppose the application for leave to lodge a Notice of Appeal out of time. The application may be allowed.”



5. The principles that apply in an application for leave to extend time under rule 4 The Court of Appeal Rules were well summarized in *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* [1999] 2 EA 231 as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this Court takes into account in deciding whether to grant an extension of time, are first, the length of the delay, secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted, and fourthly, the degree of prejudice to the respondent if the application is granted.”

6. As I have said there is not much information provided by the applicant who I note is unrepresented as the Motion is homegrown. What is obvious however that is after the appeal was dismissed the applicant applied for proceedings from the High Court for purposes of appeal to this Court but the same were not availed to him on time to enable him file an appeal within the time allowed by the rules. The respondent has taken what I consider to be a pragmatic view of the matter and does not oppose the application.

7. The applicant says in the said application and supporting affidavit that the Judge erred in law in upholding conviction where identification was not proved; that the conviction was based on an identification parade which was not properly conducted. These are reasonable grounds to be argued on appeal.

8. Although the length of delay is not stated the reason for delay is stated to be the applicant’s inability to obtain proceedings of the High Court on time to enable him appeal.

9. I allow the Motion. Let the applicant lodge a Notice of Appeal within fourteen (14 days).

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF SEPTEMBER, 2024.

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

Deputy Registrar

