



REPUBLIC OF KENYA



KENYA LAW
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**Omondi v Republic (Criminal Application E071 of 2024)
[2024] KECA 1380 (KLR) (8 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1380 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E071 OF 2024
MA WARSAME, JA
OCTOBER 8, 2024**

BETWEEN

HILARY OMONDI APPLICANT

AND

REPUBLIC RESPONDENT

(An application for extension of time to file a notice of appeal against the judgment of the High Court at Bomet (Muia, J.) dated 19th October 2019 in HCCRA. No. 34 of 2017)

RULING

1. The applicant, (Hilary Omondi) has filed the instant application dated 6th May 2024 seeking leave to file a notice of appeal out of time against the judgment of the High Court issued in HCCRA No 34 of 2017 which dismissed his appeal against conviction and death sentence for the offence of robbery with violence contrary to Section 296 as read with Section 297 of the [Penal Code](#).
2. The applicant now wishes to appeal that decision out of time and has filed the instant application to that effect. The main reason for the delay of about four years and six months is that he was depending on his family members to procure him and advocate, but they have been unsuccessful due to financial constraints.
3. In determining the matter, I am guided by the dicta in [Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet](#) [2018] eKLR, where it was held that:

“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 the 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.”



4. Whereas the Applicant is entitled to legal counsel, he has not explained why he went to slumber for more than six years and did not move this court in good time. The period of six years is inordinate and the fact that he wants to file appeal as a pauper is an afterthought.
5. Consequently, I decline to exercise my discretion in favour of the applicant and dismiss the application dated 6th May, 2024.

DATED AND DELIVERED AT NAKURU THIS 8TH DAY OF OCTOBER, 2024.

M. WARSAME

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

