



REPUBLIC OF KENYA



KENYA LAW
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**Maina v Republic (Criminal Application E102 of 2024)
[2024] KECA 1350 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1350 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E102 OF 2024
S OLE KANTAI, JA
OCTOBER 3, 2024
[IN CHAMBERS]**

BETWEEN

FLORA NDUTA MAINA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an appeal against sentence of the High Court of Kenya at Nanyuki, (Waweru, J.) dated and delivered on 5th March, 2022 in H. C. CR. Case No. 8 of 2020)

RULING

1. The applicant, Flora Nduta Maina, in the homegrown motion on notice pray; that I allow her to file an appeal out of time and that I be pleased to “fix a close date for the hearing and determination of the appeal.” There are no grounds set out in the support of the motion but in a supporting affidavit, the applicant says that she was the accused person in High Court Criminal Case No. 8 of 2020 at the High Court of Kenya at Nanyuki; that she entered a plea agreement where she had been charged with the offence of manslaughter. She was sentenced to serve 15 years imprisonment. She says that she had no lawyer to assist her and she is a pauper not able to engage the services of a lawyer; that she has been processing trial proceedings in vain which has caused delay and that is why she was unable to file an appeal within the stipulated period.
2. She says that her proposed appeal has high chances of success. She has annexed a draft memorandum of appeal where five grounds of appeal are set out. One of the grounds she proposes to argue on appeal is that the Judge erred in law and fact by meting out a harsh and excessive sentence considering that she did not go through a trial.
3. I have seen written submissions by the respondent where it is said that the respondent does not oppose the application for extension of time.



4. I have considered the application.
5. The principles that apply in an application for leave to extend time are well settled and were set out in the oft cited case of *Leo Sila Mutiso v. 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. I note here that the applicant was sentenced to 15 years imprisonment on 5th March, 2022. A notice of appeal attached to the application is dated 3rd January, 2024.
7. The office of Director of Public Prosecutions has no objection to my extending time to appeal. I do not think there has been inordinate delay.
8. In those circumstances, I exercise my discretion and extend time to file appeal. Let the applicant file appeal within 21 days of today.

DATED AND DELIVERED AT NYERI THIS 3RD DAY OF OCTOBER, 2024.

S. OLE KANTAI

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

