



REPUBLIC OF KENYA



KENYA LAW
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**Mwita v Republic (Criminal Application E114 of 2024)
[2024] KECA 1343 (KLR) (2 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1343 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E114 OF 2024**

MSA MAKHANDIA, JA

OCTOBER 2, 2024

[IN CHAMBERS]

BETWEEN

FRANCIS CHACHA MWITA APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an Application seeking extension of time to file and serve
Record of Appeal against the Judgment of the High of Kenya at
Migori, (Mrima, J.) dated 21st May, 2019 in HCCRC No. 14 of 2018)*

RULING

1. The applicant was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. He pleaded not guilty to the information and his trial thereafter ensued in the High Court of Kenya at Migori. At the conclusion thereof, Mrima, J found him guilty, convicted him and sentenced him to 30 years imprisonment. Aggrieved by the conviction and sentence, the applicant wishes to appeal the decision in this Court.
2. However, the time within which to do so has long expired. The judgment sought to be appealed from was delivered on 21st May, 2019. The applicant was therefore expected to file his appeal in this Court within 14 days from the date of the delivery of the judgment aforesaid. However, to date he has not been able to do so. Since the time for the filing the appeal has long expired, the applicant requires the indulgence of this Court to do so out of time, hence the instant application.
3. The application is supported by the grounds on its face as well as the supporting affidavit sworn by the applicant. In the supporting affidavit the applicant explains the reason(s) that prevented him from filing the appeal on time. He depones that this was because he did not receive the trial court 's judgment



in time. That it was not until recently that he accessed it. Secondly, he was relying on the members of his family to secure him the services of a lawyer to pursue the appeal, but this never came to fruition.

4. The respondent did not file any documents in rebuttal to the application. Accordingly, I take the depositions by the applicant as truthful. However, in its written submissions, the respondent indicates that it is not averse to the application being granted as prayed. I note that the applicant did not file any submissions in support of his application. That notwithstanding, I will have to determine the application on the basis of the pleadings laid before me.
5. I am aware that the power to extend time is discretionary exercisable by court upon satisfactory reasons for the delay being given. It is trite law that the entire period of delay has to be explained to the satisfaction of the Court. I am also aware that in considering whether to extend time or not, I am obliged to consider whether the intended appeal is arguable and has chances of success, hence not frivolous.
6. In this application, the decision sought to be impugned was delivered as already stated on 21st May 2019. The instant application was filed on 8th July 2024, a delay of about 5 years which outrightly falls outside the 14 days period required by law to lodge an appeal to this Court. However, having considered the uncontroverted reasons for the delay, the sentence being served by the applicant of 30 years, the undoubted right of the applicant to exhaust the appellate process and the fact that the respondent is not opposing the application, I am inclined to exercise my unfettered discretion in favour of the applicant. Accordingly, I allow the application as prayed.

DATED AND DELIVERED AT KISUMU THIS 2ND DAY OF OCTOBER, 2024.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

