



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Adala v Republic (Criminal Application E130 of 2024)  
[2024] KECA 1344 (KLR) (2 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1344 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION E130 OF 2024  
MSA MAKHANDIA, JA  
OCTOBER 2, 2024**

**BETWEEN**

**JUSTIN OTIENO ADALA ..... 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 Siaya,  
(Aburili, J.) dated 16th November, 2024 in HCCRC No. 05 of 2020)*

**RULING**

1. The applicant and one, Frederick Omondi Onyango were jointly charged with the offence of murder contrary to section 103 as read with section 104 of the *Penal Code*. They returned a no guilty plea to the information and they were tried, convicted and sentenced to 25 years imprisonment in the High Court of Kenya at Siaya (Aburili, J).
2. Dissatisfied with the conviction and sentence, the applicant is now desirous of appealing the decision to this Court. However, he has been got up by the strict timelines of this court with regard to the filing of appeals. The rules of this court require that such appeals be filed within 14 days from the date of the delivery of the judgment or ruling sought to be appealed against. In this case, the judgment sought to be appealed against was delivered on 16<sup>th</sup> November, 2021. To date the applicant has not been able to file his intended appeal. Under the rules of this court cited in the application, the applicant requires the leave of court to file the appeal out of time. This is the essence of the instant application dated 30<sup>th</sup> July 2024. The application is supported by the grounds on its face as well as the supporting affidavit of the applicant. In the main the applicant depones that the intended appeal has high chances of success and that he is a pauper and therefore not in position to raise the required fees.



3. The respondent did not file any documents in rebuttal to the application on being served with the application. Its response only comes through its written submissions in which it opposes the application on grounds that, the delay has not been explained and that the arguability of the intended appeal has not been demonstrated since no draft memorandum of appeal has been annexed to the application. However, I need to point out that submissions cannot take the place of pleadings. In this case, the respondent having failed to file any pleading in response to the application in the form of a replying affidavit, it cannot be heard opposing the application merely on the basis of its written submissions. To that extent its submissions on that score are irrelevant and prejudicial to the applicant as he had no opportunity to counter the same.
4. Much as the applicant has not explained the delay and whether the intended appeal is arguable, I however have not lost sight of the fact that the applicant is acting in person and might not be in the know as regards the intricacies of the law and as such due allowance ought to be given to that fact. Further it should be noted that the applicant has an inalienable right to exhaust the appellate process. The appellant too was sentenced to serve a long period of incarceration. It may well be that on appeal the sentence may be interfered in his favour. I do not wish to deny him that opportunity on the aforesaid technicalities which in any event, the Supreme law of this land, the Constitution commands us not to. Finally, no prejudice to the respondent has been demonstrated if I was to allow the application
5. In the result and for the aforesaid reasons, I am inclined to and do hereby allow the application in its entirety.

**DATED AND DELIVERED AT KISUMU THIS 2<sup>ND</sup> DAY OF OCTOBER, 2024.**

**ASIKE-MAKHANDIA**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**

