



REPUBLIC OF KENYA



**Wekesa v Republic (Criminal Application E129 of 2024)
[2024] KECA 1339 (KLR) (1 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1339 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E129 OF 2024
MSA MAKHANDIA, JA
OCTOBER 1, 2024**

BETWEEN

MOSES SIRENGO WEKESA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an Application seeking extension of time within which to file and serve Record of Appeal against the Judgment of the High of Kenya at Bungoma, (Aroni, J.) dated 18th August, 2016 in HCCRC No. 21 of 2012)

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. However, upon full trial, he was found guilty and upon conviction he was sentenced to death.
2. Aggrieved by the conviction and sentence, the applicant intends to appeal the decision in this Court. However, the time within which he was required to do so has long gone by. It is on this basis that the applicant has lodged the instant application seeking this Court's indulgence to file the appeal out of time. The application is supported by the affidavit of the applicant. In the main he depones that the reason for the delay was that he was depending on his family members to hire an advocate for him to pursue the appeal. However, due to financial constraints they were unable to do so. The respondent did not file any documents in opposition to the application. It should also be noted that the applicant did not file written submissions in support of the application. However, the respondent did file its written submissions in which it opposed the application on the grounds that the delay was inordinate.
3. I have carefully read and considered the application, the supporting affidavit and the submissions of the respondent and this is my take on the application. The power to extend time is discretionary, exercisable by court upon satisfactory reason 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. In considering whether to extend time or not, the court is obliged to also consider whether the intended appeal is arguable and has chances of success, hence not frivolous.

4. In this application, the decision sought to be appealed was delivered on 18th August 2016. The instant application was filed on 7th June 2024, a delay of about 8 years, which outrightly falls outside the 14 days period required by law to lodge an appeal. I have looked at the proposed grounds of appeal and I am satisfied that they are not frivolous. In particular, the ground that the trial court erred in imposing the mandatory death sentence in the light of the emerging jurisprudence on mandatory nature of death sentence. As for the reasons for the delay, the applicant has rendered plausible reason. Apart from the respondent merely saying that the delay was inordinate, it has not addressed the reason for the delay advanced by the applicant. To that extent, the deposition of the applicant on that score remains uncontroverted and I believe him. I also bear in mind, the sentence imposed, which is death. Bearing in mind all the foregoing, I am persuaded to exercise my unfettered discretion in favour of the applicant. Accordingly, I allow the application.

DATED AND DELIVERED AT KISUMU THIS 1ST 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

