



REPUBLIC OF KENYA



KENYA LAW
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**Kinyua v Republic (Criminal Application E164 of 2024)
[2024] KECA 1721 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1721 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E164 OF 2024
A ALI-ARONI, JA
NOVEMBER 21, 2024**

BETWEEN

PETER MAINA KINYUA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for an extension of time to file an appeal out of time against the Judgment of the High Court at Nyeri (Cherere, J.) delivered on 7th September 2024 in HCCRA No. 04 of 2020)

RULING

1. Before me is an application dated 29th October 2024, seeking to extend time to file an appeal against the judgement of the High Court (Cherere, J.) in HCCRA No. 04 of 2020.
2. The application is predicated on the grounds on the face of the application stating that; the applicant was charged and convicted for the offence of attempted murder in Criminal Case No. 289 of 2019 at Othaya Law Courts and sentenced to 50 years imprisonment; the applicant appealed against decisions to the High Court at Nyeri in HCCRA No. 04 of 2020 and the appeal was dismissed; the applicant did not appeal to this Court on time as he was not issued with High Court proceedings after the dismissal of his appeal.
3. The application is further supported by the affidavit of the applicant in which he deposes that; the imposed sentence is harsh, excessive, and contravenes the provisions of Section 389 of the Penal Code and Sections 216 and 329 of the Criminal Procedure Code; the applicant was denied the right to legal representation which he is entitled to under the Constitution of Kenya given the weighty and grave nature of the charge that was preferred against him; the applicant is informed by his counsel which information he believes that this Honourable Court has the powers to allow him to file an appeal out of time; and he thinks he has arguable grounds.



4. Learned counsel for the applicant has filed written submissions and a list of authorities dated 15th November 2024. Learned counsel has rehashed the grounds on the face of the application and the supporting affidavit and, in addition, submits that the applicant was not represented at the trial and it is only recently that his family sought to engage the counsel, and that the applicant having been incarcerated, was not able to lodge his appeal on time after the High Court upheld the decision of the trial court.
5. Learned counsel, in urging the court, relies on the case of *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* (2018) eKLR, where the court held that the law does not set out any minimum or maximum period of delay and that what an applicant needs to do in such an application is to explain the delay satisfactorily. Though admitting that the delay in this instance is long, learned counsel submits that it should not hinder allowing the applicant to seek justice given the 50 years' imprisonment meted out, which is harsh and excessive. Learned counsel further states that given the gravity of the offence the applicant was not accorded legal representation. Learned counsel referred to the case of *Mungatu vs. Republic* Criminal Application No. E009 of 2023, where the court observed the difficulties prisoners face in obtaining proceedings in time to meet the timelines set for filing of appeals and held the view that it would be draconian to apply same standard as the court would to a free person with the ability to visit or write to the High Court for proceedings. The court proceeded to excuse the delay of 14 months.
6. The respondent has neither filed a response to the application nor written submissions.
7. I have considered the application, the supporting affidavit, the submissions, and cited case law. The issue for determination is whether the applicant deserves the orders sought. Rule 4 of this Court's Rules allows the court to exercise discretion to extend the time limited by the Rules for doing any act authorized or required. In the case *Leo Sila Mutiso vs. Helen Wangari Mwangi* [1999] 2 EA, this Court confirmed that the decision on whether to extend the time for filing an appeal out of time is discretionary, taking into account the length of the delay and the reason for the delay. The Supreme Court has stated that several key issues are to be considered in an application for an extension of time. In the case, *Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 Others* [2014] eKLR, it stated that an extension of time is an equitable remedy only available to a deserving party at the discretion of the court, that a party who seeks extension of time has the burden of laying a basis to the satisfaction of the court to consider whether the delay is reasonable, whether the application has been brought without undue delay and due regard must be taken as to whether the respondent will suffer any prejudice if the extension is granted.
8. The applicant is 4 years late. He explains that he did not get his proceedings on time, informed by his incarceration. Further that he did not have legal representation until recently and was unaware of the technicalities involved. Agreeing with the reasoning of my brother Mwaniki Gacoka, JA in *Mungatu vs. Republic* (*supra*), I take cognizant of the conditions that prisoners face and the inadequate facilities available to them, and that in the absence of counsel, a convictee may face hardship and delay in communicating and obtaining proceedings from the court, coupled with the courts having their fair share of difficulties in processing the proceedings on time.
9. In the circumstances, I find the applicant's explanation satisfactory; the delay, though long, is not deliberate, and since the State has not responded to the extension, I find that no prejudice will, in any event, be suffered.
10. I allow the application. The appeal be filed within the next fourteen (14) days of the date hereof.

DATED AND DELIVERED AT NYERI THIS 21ST DAY OF NOVEMBER, 2024.

ALI-ARONI



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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

