



REPUBLIC OF KENYA



KENYA LAW
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**Kamande v Republic (Criminal Application E152 of 2024)
[2024] KECA 1712 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1712 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E152 OF 2024
S OLE KANTAI, JA
NOVEMBER 14, 2024**

BETWEEN

FRANCIS NJOROGE KAMANDE APPLICANT

AND

REPUBLIC RESPONDENT

*(An application for extension of time for Leave to appeal out of time
from the Judgment of the High Court at Muranga (S. Chirchir, J.)
delivered on 16th January, 2018 in HC Criminal Appeal No. 5 of 2018)*

RULING

1. Francis Njoroge Kamande, the applicant, has applied in the Motion on notice that the Court be pleased to allow him to appeal out of time against the sentence in the original High Court Criminal Appeal No. 5 of 2018 at Muranga "... for justice to prevail."
2. He says that the proposed appeal has high chances of success and adds in his supporting affidavit that he was charged with the offence of robbery with violence contrary to section 296(2) of the Penal Code at the Chief Magistrate Court, Kandara; his first appeal was dismissed on 18th April, 2023 by Chirchir, J. Further:

"That, soon after my conviction I was promised by my family that they would hire me a lawyer but the same has been difficult due to financial challenges prompting to appeal out of time. ..."
3. I have not seen any replying affidavit or written submissions. I note the hearing notice dated 4th November, 2024 to odppnyeri@odpp.go.ke, kamitidocs@gmail.com and kamitimediumdocs@gmail.com where parties were notified of hearing date and required to file written submissions.



4. The principles that apply in an application for extension of time were well set out in the oft-cited case of *Leo Sila Mutiso vs. 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.”

5. The applicant says that after his first appeal was dismissed he was promised by his family that they would engage a lawyer for him but that it did not happen because they could not afford lawyer fees. This is not an unreasonable explanation for delay. I note that the Motion is dated 1st October, 2024. The first appeal was dismissed on 18th April, 2023. The applicant has affixed his thumbprint to the Motion and the same was processed by the Officer-in-Charge, Kamiti Maximum Prison. The applicant is a convict detained at that facility and may not have the best resources or infrastructure to be able to meet guidelines on lodging documents in this Court according to our rules. Delay here is not inordinate.
6. The applicant has not given me information to know whether the intended appeal has chances of success but, again, that is only one of the factors to consider in an application like this one.
7. I cannot see how the respondent would be prejudiced if I allow the Motion. I exercise my discretion in favour of the applicant. I allow the Motion. Let the applicant file appeal within fifteen (15) days of today; the registry to accept the same without requiring any court fees from the applicant.

DATED AND DELIVERED AT NYERI THIS 14TH DAY OF NOVEMBER, 2024.

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

