



**Choge v Republic (Criminal Appeal (Application) E129 of 2024)
[2024] KECA 1545 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1545 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL (APPLICATION) E129 OF 2024
JM MATIVO, JA
NOVEMBER 6, 2024**

BETWEEN

RICHARD KIMUTAI CHOGE APPELLANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to file an appeal out of time from the Judgment of the High Court of Kenya at Kericho (Mumbi Ngugi, J.) dated 20th December, 2018 in HCCR. No. 36 of 2013)

RULING

1. The application before the Court is dated 15th July, 2024. The main prayer is for leave to be granted to appeal out of time against the judgment issued in HCCR. No. 36 of 2013, on 20th December, 2018.
2. The applicant, Richard Kimutai Choge, Was arraigned before the High Court in Criminal Case No. 36 of 2013 at Kericho, charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He was convicted and sentenced to life imprisonment.
3. The applicant failed to lodge his notice of appeal within the statutory-stipulated time of 14 days. His present application invokes Rule 4 of the Court of Appeal Rules to enlarge time to file his first appeal.
4. It is the applicant's case that the reason for the delay was because he was not supplied with the High Court judgment on time to enable him prepare his appeal on time.
5. In response to the application vide written submissions dated 31st October 2024, Mr. Omutelema, Senior Assistant Director of Public Prosecutions has amiably conceded to the leave application pointing to the lengthy sentence of life imprisonment.
6. I have considered the application, the notice of appeal, memorandum of appeal, the undated supporting affidavit. It is evident that there has been a delay of 5 years and six months in filing the appeal



against the judgment of the High Court. The applicant's position is that the delay was occasioned by the failure by the trial court to furnish him with the High Court Judgement.

7. It is trite that this Court has unfettered discretion under Rule 4 of the Court's Rules, to extend time for the doing of any act under the Rules. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR, and stated as follows:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

8. In applying the principles in Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet (supra), and considering that the applicant has been sentenced to life imprisonment, I am inclined to exercise my discretion in his favour. Accordingly, the undated notice of appeal and memorandum of appeal are deemed as duly filed. The record of appeal shall be filed within 60 days from today.

DATED AND DELIVERED AT NAKURU THIS 6TH DAY OF NOVEMBER, 2024.

J. MATIVO

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR.

