



REPUBLIC OF KENYA



KENYA LAW
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**Ewoi v Republic (Criminal Appeal (Application) E116 of 2024)
[2024] KECA 1542 (KLR) (5 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1542 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL (APPLICATION) E116 OF 2024
JM MATIVO, JA
NOVEMBER 5, 2024**

BETWEEN

KUKAT EWOI 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 Nyahururu (C. Kariuki, J.) dated 13th day of April, 2023 in HCCRA No. 88 of 2017)

RULING

1. The application before the Court is dated 5th July 2024. The main prayer is for leave to appeal out of time against the judgment issued in HCCA No. 88 of 2017, on 13th April, 2023.
2. The applicant, Kukat Ewoi, was arraigned before the Magistrate Court at Nyahururu in Criminal Case No. 1275 of 2013 charged with the offence of robbery with violence contrary to section 296 (2) of the [Penal Code](#). He was convicted and sentenced to life imprisonment.
3. The applicant's appeal to the High Court was dismissed on both conviction and sentence. 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 the time he is permitted to file his appeal.
4. It is the applicant's case that the reason for the delay in filing his appeal on time was because he was not supplied with the High Court's Judgment on time.
5. In response to the application vide written submissions dated 30th October, 2024, Mr. Omutelema Senior Assistant Director of Public Prosecutions has amiably conceded to the leave application pointing to the death sentence.



6. I have considered the application, the undated memorandum of appeal, and the undated supporting affidavit. It is evident that there has been a delay of one (1) year and two months in filing the appeal against the judgment of the High Court. The applicant's position is that the delay was occasioned by delay in furnishing him with the judgment of the High Court.
7. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of *Andrew Kiplagat Chemaringo v 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. I am satisfied that this is a proper case for me to exercise my discretion in favour of the applicant. Accordingly, I allow the applicant's application and order that the notice of appeal and memorandum of appeal be filed within 14 days from today. The record of appeal shall be filed within 45 days from today.

DATED AND DELIVERED AT NAKURU THIS 5TH 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.

