



REPUBLIC OF KENYA



**KENYA LAW**  
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**Owuor “A” Antony Njenga v Republic (Criminal Appeal (Application)  
E112 of 2024) [2024] KECA 1540 (KLR) (5 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1540 (KLR)

***NAK E112 OF 2024***

**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL AT NAKURU**

**CRIMINAL APPEAL (APPLICATION) E112 OF 2024**

**JM MATIVO, JA**

**NOVEMBER 5, 2024**

**[IN CHAMBERS]**

**BETWEEN**

**ANDREW OMONDI OWUOR “A” ANTONY NJENGA ..... 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 Kabarnet (J. M.  
Bwononga, J.) dated 12th February, 2021 in HCCRA No. 04 of 2019)*

**RULING**

1. The application before the Court is undated. The main prayer is for leave to be granted to the applicant to appeal out of time against the judgment issued in HCCA No. 4 of 2019, on 12<sup>th</sup> February, 2021.
2. The applicant, Andrew Omondi Owuor was arraigned before the Magistrate’s Court in Criminal Case No. 779 of 2017 at Eldama Ravine charged with the offence of attempted murder contrary to Section 220 of the *Penal Code*. He was convicted and sentenced to serve forty (40) years imprisonment.
3. His appeal to the High Court against his conviction was dismissed. However, his sentence was reduced to twenty-five (25) years imprisonment. Although aggrieved, the applicant failed to lodge his notice of appeal within the statutory- stipulated time of fourteen (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 and that he filed his appeal to this Court on 27<sup>th</sup> March, 2023 but did not get any feedback.



5. In response to the application, vide written submissions dated 30<sup>th</sup> October, 2024, Mr. Omutelema Senior Assistant Director of Public Prosecution has amiably conceded to the leave application pointing to the lengthy sentence the applicant is currently serving.
6. I have considered the application, the undated supporting affidavit, the notice of appeal dated 3<sup>rd</sup> July, 2024, and the memorandum of appeal dated 3<sup>rd</sup> July, 2024. It is evident that there has been a delay of approximately 1 years and four 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. In applying the principles in *Andrew Kiplagat Chemaringo v. Paul Kipkorir Kibet* (*supra*), and considering that the applicant is serving a twenty-five year sentence, I am inclined to exercise my discretion in his favour. The notice of appeal dated and memorandum of appeal both dated 3<sup>rd</sup> July, 2024 are deemed as duly filed. The record of appeal shall be filed within 60 days from today.

**DATED AND DELIVERED AT NAKURU THIS 5<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**J. MATIVO**

.....

**JUDGE OF APPEAL**

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

*signed.*

**DEPUTY REGISTRAR.**

