



**Mochana v Republic (Criminal Appeal (Application) E108 of 2024)
[2024] KECA 1553 (KLR) (4 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1553 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL (APPLICATION) E108 OF 2024
JM MATIVO, JA
NOVEMBER 4, 2024**

BETWEEN

STEPHEN MUTAI MOCHANA 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 29th March, 2017 in HCCA No. 41 of 2015)

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. 41 of 2015, on 29th March, 2017.
2. The applicant, Stephen Mutai Mochana, was arraigned, and tried before the Senior Resident Magistrates' Court in *Criminal Case No. 2202 of 2014 at Kericho* with the offence of robbery with violence contrary to section 296 (2) of the *Penal Code*. In a judgment dated 2nd September, 2015, he was convicted and sentenced to death as prescribed by law.
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 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 original trial court's record and judgment to enable him appeal 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 serious offence charge and the death sentence.



6. It is trite that this Court has unfettered discretion under Rule 4 of the *Court of Appeal Rules, 2022* to extend time for the doing of any act under the rules. This discretionary power, however, is judicial in nature and must be confined to the rules of reason and justice. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat vs. I.E.B.C. & 7 Others* (2014) eKLR, stated:
- a. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
 - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 - c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 - e. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - f. Whether the application has been brought without undue delay; and,
 - g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
7. I have considered the application and the undated supporting affidavit and the respondent's submissions in concession of the motion. I have also read the attached memorandum of appeal setting out grounds which, for an intending appellant exercising their undoubted right of a second appeal, cannot be said to be inarguable. I am satisfied that the applicant has met the threshold for the exercise of discretion by this Court.

Consequently, I allow the undated application for the extension of time. The record of appeal shall be filed and served within 30 days from the date of this ruling and the appeal thereafter be placed listed for hearing.

DATED AND DELIVERED AT NAKURU THIS 4TH DAY OF NOVEMBER, 2024.

J. MATIVO

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR.

