



**Ngari v Republic (Criminal Application E131 of 2024)  
[2024] KECA 1874 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1874 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E131 OF 2024**

**JW LESSIT, JA**

**DECEMBER 19, 2024**

**BETWEEN**

**EDDY KARIUKI NGARI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being a Criminal Application under Rule 40 of the Court of Appeal Rules, 2010 arising from the Judgment of the High Court of Kenya at Nyeri (Kizito, J.) dated and delivered on 20th June, 2024 in H.C.CR. C. No. E003 of 2021)*

**RULING**

1. The applicant, Eddy Kariuki Ngari, filed this application under rule 40 of the [Court of Appeal Rules, 2010](#), dated 22<sup>nd</sup> August, 2024. He seeks to be granted leave to appeal out of time and as a pauper. Further, that any other order the Court may deem fit.
2. The application is supported by the affidavit sworn by the applicant. He stated that there was an annexed draft memorandum of appeal. In his supporting affidavit, he avers that he was arrested and charged with the offence of murder contrary to section 203 of the [Penal Code](#). He avers that he entered into plea bargaining where he was convicted of the offence of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#). The High Court sentenced him to 25 years imprisonment on 20<sup>th</sup> June 2024. He states further that he did not appeal to the Court of Appeal within the stipulated period.
3. 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.”

4. The applicant should give a reasonable and plausible explanation for the delay. The court has to determine the length of the delay, whether it is inordinate and whether the reasons advanced for the delay are reasonable,
5. The reason the applicant gives for the delay is that his family was unable to raise lawyers fee to enable him file the appeal. In his submissions, he urges that he wishes to appeal against the sentence only. He submitted that there are grounds upon which such an application can be allowed. Reliance was placed on the case of *Karanja v Republic* [2004] eKLR for the proposition that courts have exercised their discretion and allowed applications for leave to appeal out of time in circumstances where the applicant has demonstrated valid reason for the delay.
6. He urges that the other reason for the delay is the length of time it took to obtain the proceedings, which he erroneously blames it on the prosecution. He submits that for that reason the reasons for delay in filing his appeal were reasons beyond his control. He urges that his intended appeal has merits. The other ground urged is his diligence in preparing this application when he realized the harshness of the sentence. Finally he urges that there is new evidence and or arguments have come up since his conviction regarding procedural irregularities during the plea bargain which has the potential of leading to a reconsideration of his sentence if the matter is heard on appeal.
7. I have considered this application and the explanation given for the delay, which I find reasonable in the circumstances. I have considered whether the intended appeal, has chances of success or is a mere frivolity, bearing in mind that as a single Judge I cannot make a definite determination on that point. It is in my view not frivolous given the argument about new trends in sentencing.
8. The applicant was sentenced on the 20<sup>th</sup> June 2024. He had 14 days within which to file his appeal. This application was filed on 22<sup>nd</sup> August 2024, 50 days after the prescribed period for filing notice of appeal. I find the length of the delay was not inordinate.
9. Consequently, the applicant’s undated application is allowed as prayed. The applicant is granted leave to file his appeal out of time and as a pauper. The registry should prepare the record of appeal and serve upon the appellants and respondents.

**DATED AND DELIVERED AT NYERI THIS 19<sup>TH</sup> DAY OF DECEMBER, 2024.**

**J. LESIIT**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

