



REPUBLIC OF KENYA



KENYA LAW
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**Kabuga v Republic (Criminal Application E155 of 2024)
[2024] KECA 1881 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1881 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E155 OF 2024
JW LESSIT, JA
DECEMBER 5, 2024**

BETWEEN

ISAAC KURIA KABUGA APPLICANT

AND

REPUBLIC RESPONDENT

(Being a Criminal Application under Rule 40 of the Court of Appeal Rules, 2010, arising from the judgment of the Nyeri High Court delivered by R. T. Rutto, J. on 11th September, 2024 in HCCR. A Case No. E004 of 2022)

RULING

1. The applicant, Isaac Kuria Kabuga, filed this application under rule 40 of the [Court of Appeal Rules, 2010](#), dated 14th October, 2024. He seeks to be granted leave to appeal out of time and as a pauper.
2. The application is supported by the affidavit sworn by the applicant. He avers that the he was convicted the Sexual Offences Case No.64 of 2020 by Nyeri Chief Magistrate’s Court. He does not mention the offence he was convicted of, nor the sentence imposed against him. His appeal to the High Court was dismissed. He states further that he did not appeal to the Court of Appeal within the stipulated period. The reason he gives for that is that his family was unable to raise lawyers fee to enable him file the appeal.
3. The application is unopposed as I have not seen any response or submissions from the State.
4. On the authority of [Imperial Bank Ltd \(in receivership\) and Another v Alnasir Popat and 18 Others](#) [2018] eKLR, this Court stated that:

“Some of the considerations to be borne in mind while considering an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a



party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal; the need to protect a party's opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity. In taking into account the last consideration, it must be born in mind that it is not really the role of the single judge to determine definitively the merits of the intended appeal. That is for the full court if and when it is ultimately presented with the appeal.”

5. Applying these principles to this case, the applicant has to give a reasonable and plausible explanation for the delay in filing his appeal on time. In his affidavit in support of this application he avers that his family had promised him that they would raise funds and hire a lawyer to file his appeal and represent him. That after waiting for long he was recently informed that they were unable due to high fees charged by counsels.
6. I have considered the length of the delay. The High Court judgment was delivered on the on 18th September, 2024. That is a period of two months. That period is in my considered view not inordinate. The explanation given for the delay is in the circumstances a reasonable explanation.
7. As to whether the appeal has chances of success, I am not able to access as no memorandum of appeal is annexed. That notwithstanding, I am persuaded that the application has merit and that the applicant should be given a chance to ventilate his intended appeal.
8. 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 appellant and respondent.

DATED AND DELIVERED AT NYERI THIS 5TH 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

