



**Kimulel v Republic (Criminal Application E173 of 2024)
[2024] KECA 1748 (KLR) (4 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1748 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E173 OF 2024
MA WARSAME, JA
DECEMBER 4, 2024**

BETWEEN

SAMUEL KIMUTAI KIMULEL APPLICANT

AND

REPUBLIC RESPONDENT

(An application for extension of time to file a notice of appeal, against the judgment of the High Court at Naivasha (Bwongonga, J.) dated 31st January 2017, in HCCRA No. 7 OF 2017)

RULING

1. The applicant has filed an application dated 19th August, 2024, seeking extension of time to file his appeal.
2. In his affidavit in support of the application, he deposes that he was charged with the offence of robbery with violence contrary to section 296(2) of the *Penal Code* and sentenced to life imprisonment. He avers that he has not filed the appeal because he was not supplied with a copy of the High Court file. He further contends that he has previously attempted to file the appeal unsuccessfully and has annexed a notice of appeal, Memorandum of Appeal and chamber summons application to the High Court seeking to enlarge time, which were received by the court on 20th March 2023.
3. Under Rule 4 of the Rules of this Court 2022, the power to extend time is discretionary and is exercisable upon a satisfactory explanation being given for the delay in filing an appeal, as in this case. There has been a delay of seven years and five months in seeking extension of time. The explanation given is that the applicant has not been able to obtain the High Court proceedings hence he was not able to file his record of appeal to this court.



4. Section 349 of the *Criminal Procedure Code* provides as follows with respect to the filing of appeals:

An appeal shall be entered within fourteen days of the date of the order or sentence appealed against. Provided that the court to which the appeal is made may for good cause admit an appeal after the period of fourteen days has elapsed, and shall so admit an appeal if it is satisfied that the failure to enter the appeal within that period has been caused by the inability of the appellant or his advocate to obtain a copy of the judgment or order appealed against, and a copy of the record, within a reasonable time of applying to the court therefore.

5. Indeed 7 years is a long time, however the applicants attempt to be supplied with the High Court proceedings is clearly noted in his chamber summons application to the High Court. The applicant’s contention that he was unable to file his appeal because he was never supplied with the High Court judgment or proceedings is therefore plausible and has not been contested by the respondent.

6. For this reason, I am moved to exercise the court’s discretion to allow the application dated 19th August 2024. Consequently, the applicant is directed to file and serve a notice of appeal within 30 days hereof.

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

M.WARSAME

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JUDGE OF APPEAL

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

Signed

Deputy Registrar

