



REPUBLIC OF KENYA



KENYA LAW
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**Olik v Republic (Criminal Appeal (Application) E287 of 2022)
[2023] KECA 1456 (KLR) (24 November 2023) (Ruling)**

Neutral citation: [2023] KECA 1456 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL (APPLICATION) E287 OF 2022**

JM NGUGI, JA

NOVEMBER 24, 2023

BETWEEN

GEORGE OMWOMBO OLIK 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 Siaya (Aburili, J.) dated 10th May, 2022 in HCCRC No. E012 of 2021)

RULING

1. The applicant, George Omwombo Olik, was arraigned, and tried at the High Court in Siaya with the offence of murder. In a judgment dated 10th May, 2022, he was convicted and sentenced to 35 years imprisonment.
2. Through an undated application which was received at the Court of Appeal registry on 14th November, 2022, the applicant now seeks leave to file an appeal against the High Court judgment and sentence out of time. He says he was aggrieved by both the conviction and sentence but that he lacked the resources to hire a lawyer to file an appeal on his behalf; and that his family had promised to procure one but it never materialized.
3. The applicant believes his appeal has a high probability of success and has attached a self-crafted Memorandum of Appeal in which he raises five grounds of appeal.
4. The respondent has graciously conceded to the appeal pointing to the serious offence charge; the long imprisonment sentence and the fact that the delay of six months is not inordinate considering that the applicant is in custody.
5. Rule 4 of the [Court of Appeal Rules](#) governs the extension of time. The Rule allows this Court to exercise discretion to extend the time limited by the Rules for the doing of any act authorised or



required by the Rules. In *Leo Sila Mutiso v Helen Wangari Mwangi* [1999] 2 EA, this Court held as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay: secondly, the reason for the delay: thirdly (possibly), the chances of the appeal succeeding if the application is granted: and, fourthly, the degree of prejudice to the respondent if the application is granted”.

6. I have considered the application and the supporting affidavit and the respondent’s submissions in concession of the motion. I have also read the attached Draft Memorandum of Appeal setting out grounds which, for an intending appellant exercising their undoubted right of first appeal, cannot be said to be inarguable. I am satisfied that the applicants have met the threshold for the exercise of discretion by this Court.

Consequently, I hereby allow the undated application which was received in the Court’s registry on 14th November, 2022.

7. The applicant shall file a Notice of Appeal within fourteen (14) days hereof. The Record of Appeal shall be filed within sixty (60) days hereof and the appeal thereafter placed before the Court for hearing.
8. Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 24TH OF NOVEMBER, 2023.

JOEL NGUGI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

