



**Bichanga v Republic (Criminal Application 2 of 2021)  
[2022] KECA 723 (KLR) (27 May 2022) (Ruling)**

Neutral citation: [2022] KECA 723 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION 2 OF 2021  
PO KIAGE, JA  
MAY 27, 2022**

**BETWEEN**

**JOASH MARUBE BICHANGA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Application to seek leave to file record of appeal together with memorandum of appeal out of time from a judgment of the High Court of Kenya at Kisumu (E. N. Maina, J.) delivered on 19th December, 2019 in HCCRA NO. 55 OF 2015)*

**RULING**

1. By the motion on notice dated 9<sup>th</sup> April, 2021 and brought under Rule 4 (though erroneously cited as section 4 of the *Court of Appeal Rules*, the applicant, Joash Marube Bichanga prays that this Court grant leave for him to file the record of appeal out of time, and that the annexed record of appeal be deemed as duly filed upon payment of the requisite fees.
2. In the grounds on the face of the motion as well as in the supporting affidavit sworn on the same 9<sup>th</sup> April, 2021 and expounded upon in submissions filed by his advocates Osoro Omwoyo & Company Advocates, it is stated that the applicant is serving a 30-year sentence imposed by the High Court at Nyamira on 19<sup>th</sup> December, 2019. He had another advocate previously but the said advocate ceased representing him immediately he was sentenced with the result that there was a delay in filing the record of appeal.
3. He also did not get information in timely fashion that the proceedings, judgment and certificate of delay, applied for by the previous advocate before he ceased acting, had become ready for collection. Only upon appointing his current advocates was he able to obtain the information and to prepare the record as well as the application before me.



4. The respondent in written submissions under the hand of Ligami Shitsami, learned Prosecution Counsel is not opposed to the application. He points out, helpfully, that the issues I should consider in the exercise of my discretion in an application such as is before me include;“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;A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;\*Whether there will be any prejudice suffered by the respondents if the extension is granted;Whether the application has been brought without undue delay.”
5. He then offers that the applicant can be accorded the benefit of the doubt and be granted the extension sought.
6. I have considered the application and in exercise of my unfettered discretion to do justice in the matter, I am unable to see anything that would disfavour the grant of the application. The sentence faced is doubtless a long one. The appellant has an undoubted right of appeal. The delay is not so long as to seem inordinate. A good explanation has been given for the delay. The record of appeal is now ready. The respondent, who is not opposed, stands to suffer no prejudice.

In the premises the application is allowed as prayed.

**DATED AND DELIVERED AT KISUMU THIS 27<sup>TH</sup> DAY OF MAY, 2022.**

**P. O. KIAGE**

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**JUDGE OF APPEAL**

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

*Signed*

Deputy Registrar

