



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Maroko v Republic (Criminal Application E001 of 2021)  
[2022] KECA 567 (KLR) (13 May 2022) (Ruling)**

Neutral citation: [2022] KECA 567 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION E001 OF 2021**

**M NGUGI, JA**

**MAY 13, 2022**

**BETWEEN**

**EVANS MAROKO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(This was an application for extension of time to file an appeal out of time against the judgment of the High Court of Kenya at Nyamira (E.N. Maina J) dated 12th March 2020) in HCCRA NO. 32 of 2019)*

**RULING**

1. In the application dated 11<sup>th</sup> May 2021, the applicant asks this Court to extend time within which to file his Memorandum of Appeal against the decision of E.N Maina J dated 12<sup>th</sup> March 2020. He also asks that the Memorandum of Appeal annexed to his application be allowed and marked 'as proper on the Court record'. I understand this to mean that he asks that his Memorandum of Appeal be deemed as properly filed.
2. The application is supported by the applicant's affidavit sworn on 11<sup>th</sup> May 2021. The applicant states in the grounds on the face of his application and the affidavit in support that he had filed a Notice of Appeal dated 13<sup>th</sup> January 2021. Due to his incarceration and the Covid 19 restrictions, however, he was not able to file his appeal within the stipulated time.
3. In written submissions dated 19<sup>th</sup> July 2021, the respondent through Learned Counsel, Mr. Ligami Shitsama, asks this Court to give the reasons advanced by the applicant for the delay in filing his appeal the benefit of doubt.



4. Rule 4 of the [Court of Appeal Rules](#) gives this Court the 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”.

5. In this case, the judgment that the applicant seeks to appeal against was delivered on 12<sup>th</sup> March 2020. A Notice of Appeal was filed on 13<sup>th</sup> January 2021, and the present application was filed in May 2021. There was thus a delay of over 10 months in filing the Notice of Appeal, and over a year in filing this application.
6. The applicant has averred that he was incarcerated, and that there were restrictions relating to the Covid 19 pandemic which made it difficult for him to file his appeal in time.
7. I have considered the applicant’s application and the reasons advanced for failing to file the appeal in time, and for seeking the exercise of the Court’s discretion under Rule 4. It is undisputed that the period 2020-2021 was beset by the Covid 19 pandemic, as a result of which restrictions were placed on movement, and many processes, including judicial processes, were severely limited. I am therefore satisfied by the reasons advanced by the applicant for the delay in filing the appeal in time. As the respondent does not oppose the application and indeed supports it tacitly, I hereby allow the application dated 11<sup>th</sup> May 2021.
8. The Notice of Appeal dated 13<sup>th</sup> January 2021 and the Memorandum of Appeal dated 11<sup>th</sup> May 2021 are deemed as duly filed. The Record of Appeal shall be filed within 30 days hereof and the appeal thereafter placed before the Court for hearing.

**DATED AND DELIVERED AT KISUMU THIS 13TH DAY OF MAY, 2022.**

**MUMBI NGUGI**

.....

**JUDGE OF APPEAL**

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

*SIGNED*

**DEPUTY REGISTRAR**

