



**Kerema v Republic (Miscellaneous Criminal Application
E003 of 2022) [2024] KEHC 1804 (KLR) (27 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1804 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
MISCELLANEOUS CRIMINAL APPLICATION E003 OF 2022
F GIKONYO, J
FEBRUARY 27, 2024**

BETWEEN

BONFACE KEREMA APPLICANT

AND

REPUBLIC RESPONDENT

*(Revision from Original Conviction and Sentence in Narok
CMCR No.31 of 2016, and Narok HCCRA NO. 138 of 2017)*

RULING

Leave to appeal out of time.

1. Before the court is an application dated 12/01/2022. The applicant is seeking for extension of time to file an appeal to the Court of Appeal.
2. The intended appeal emanates from the judgement of Hon. Justice Bwonwong'a J. in Narok HCCRA No. 138 of 2017 delivered on 11th December 2019 in which the Applicant was sentenced to death for the offence of Robbery with violence contrary to Section 295 as read with Section 296 (2) of the [Penal Code](#).
3. In an Affidavit annexed to the application, the applicant deposed that he could not appeal on time because he relied on relatives who promised to hire a lawyer for him but could not do so due to financial constraints.
4. Ms. Rakama prosecution counsel urged this court to consider the file and decide.

Directions of the court

5. This court directed on 20/11/2023 for a copy of the judgment by the High court to be transmitted to the applicant.



6. On 23/01/2024, this court directed that the appeal file be submitted to this court.

Analysis and Determination

7. In accordance with Rule 61: -

(1) Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in sextuplicate with the registrar of the superior court at the place where the decision against which it is desired to appeal was given, within fourteen days of the date of that decision, and the notice of appeal shall institute the appeal.

8. The power to extend time for the filing of a notice of appeal in criminal cases is a substantive business of the Court of Appeal, but, with Rule 64(5) of the *Court of Appeal Rules* contemplating a situation where 'the time has been extended by order of the superior court'.

9. Be that as it may, the judgment the applicant intends to appeal against was delivered on 11th December 2019. The application herein was filed on 20.01.2022, over 2 years from the date of judgment. The delay has not been sufficiently explained. Merely stating that he was waiting for his family to engage legal counsel for him, is not a demonstration of any diligence on his part. It is such generalized reason that could be cited by all and sundry.

10. The application was not also filed timeously.

11. In the upshot, the application herein is dismissed.

12. This decision does not however preclude the applicant from seeking relief from the Court of Appeal.

13. Orders accordingly

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 27TH DAY OF FEBRUARY, 2024.

F. GIKONYO M.

JUDGE

In the presence of:-

1. Court Assistant – Otoro
2. Applicant– Present
3. M/s Rakama for DPP - Present

