

IN THE COURT OF APPEAL  
AT NAIROBI

[CORAM: ASIKE- MAKHANDIA, J.A. – IN CHAMBERS]

CRIMINAL APPLICATION NO. E021 OF 2021

BETWEEN

JACKSON MUTISYA DAUDI ..... APPLICANT

AND

REPUBLIC.....RESPONDENT

*(An application for extension of time to lodge an appeal from the judgment of the High Court of Kenya (Kemei, J.) dated 13<sup>th</sup> October, 2020*

*in*

*Machakos HCCRA No. 114 of 2019)*

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R U L I N G

1. The Jackson Mutisya Daudi “**the applicant**” has by a notice of motion dated 12<sup>th</sup> June, 2021 moved this Court for orders that he be granted leave to appeal out of time against the whole judgment of the High Court of Kenya at Machakos delivered on 13<sup>th</sup> October, 2020. He further prays that both the notice and memorandum of appeal annexed to the application be deemed as duly filed and served. There is also an antecedent prayer that the costs of the application be provided for.
2. The grounds in support of the motion are: that by the time the applicant gave instructions to his counsel to appeal, time limited for initiating the process had run out; the respondent is unlikely to suffer any prejudice; the delay was not so inordinate or great as to be inexcusable; that it was in the interest of justice to allow

the application; and finally, that the appeal is arguable as can be gathered from the draft memorandum of appeal annexed to the application.

3. The application was further supported by the affidavit of the applicant which merely reiterates and expounds the above grounds. Suffice to add that the delay in mounting the application was only six (6) months.
4. Through Messrs Nyaata & Co. Advocates, the applicant in his written submissions reiterates that he lacked access to legal counsel as he was incarcerated, that the appeal had high chances of success and that the delay of about 6 months in filing the instant application was not unreasonable.
5. Though the application was served on the respondent, it did not file any papers in opposition to the application. As it is therefore, the application is unopposed.
6. The extension of time is provided for under rule 4 of the Court of Appeal Rules which provides *inter alia*:

“The Court may, on such terms as it thinks just, by order extend the time limited by these rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these rules, whether before or after the doing of the act, and a reference in these rules to any such time shall be construed as a reference to that time as extended.”

7. In considering an application for extension, the court must be alive to several key issues in exercise of its discretion namely:
  - i. 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.

- ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court.
- iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
- iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
- v. Whether there will be any prejudice suffered by the respondents if the extension is granted; and
- vi. Whether the application has been brought without undue delay.

See Salat vs. Independent Electoral & Boundaries Commission & 7 Others

[2014] KLR – SCK.

8. From the record, I am satisfied by the reasons advanced by the applicant for his inability to file the appeal in time. The delay in filing this application is about one (1) year which in my view is not inordinate. I also note that the application is not opposed.

9. Consequently, I allow the application with the result that the notice and memorandum of appeal annexed to the application are hereby deemed as having been duly lodged and served upon payment of the requisite court fees.

Dated and Delivered at Nairobi this 12<sup>th</sup> day of May, 2023.

ASIKE-MAKHANDIA  
.....  
JUDGE OF APPEAL

*I certify that this is a  
True copy of the original  
Signed  
DEPUTY REGISTRAR*