



**Waithera v Republic (Criminal Miscellaneous Application
E062 of 2024) [2025] KEHC 3056 (KLR) (18 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3056 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL MISCELLANEOUS APPLICATION E062 OF 2024**

**PN GICHOHI, J
MARCH 18, 2025**

BETWEEN

DANIEL NGIGE WAITHERA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. It has transpired that the Applicant herein moved this Court by way of a Notice of Motion dated 16/5/2024 seeking leave to appeal out of time.
2. Simultaneously he filed a Petition of Appeal dated 16/5/2024 against both conviction and sentence from Criminal case No. 133 of 2021 Nakuru Magistrate Court.
3. Consequently, High Court Registry opened a folder for Miscellaneous Criminal Application No. E062 of 2024.
4. The same Registry still gave the same No. E062 of 2024 to Petition of Appeal. That was done manually yet that should not have been the case.
5. Consequently, the Applicant applied for typed proceedings and Judgment to enable him make up his mind on the matter.
6. When he appeared before Court today, he still maintained that he had not received the certified copy of proceedings and Judgment as ordered by Court.
7. However, the Respondent informed this Court that he received his copy of Record of Appeal.
8. Further he stated that the Applicant had filed a Miscellaneous Application and a Petition of Appeal at the same time. He sought time to respond to both.



9. The Applicant responded that he was dissatisfied with the conviction and sentence of 20 years imprisonment but got late in filing the Appeal as that was during corona virus pandemic period and that is why he is seeking leave to appeal out of time.
10. The Respondent through Mr Kihara has indicated that he has no objection to the Applicant's application for leave to appeal out of time.
11. This Court has considered the explanation for delay as stated by the Applicant and he has done so satisfactorily. In the interest of justice, the Notice of Motion dated 16/5/2024 is allowed.
12. Due to the error that occurred during registration of the application and the Petition of Appeal thereby giving both same registration number, the Petition of Appeal cannot be sustained in this folder containing the Miscellaneous Application.
13. That is despite the same having been duly served on the Respondent and the Lower Court file having been placed in this Criminal Miscellaneous Application E062 of 2024 folder.
14. Further directions on 3/4/2025.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 18TH DAY OF MARCH, 2025.

PATRICIA GICHOHI

JUDGE

In the presence of:

Daniel Ngige Waithera – Applicant

Mr. Kihara for the Respondent

Ruto, Court Assistant

