



REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NYERI  
CORAM: AKIWUMI J.A. (IN CHAMBERS)  
CRIMINAL APPLICATION NO. NAI. 12 OF 1999 (NYR.1/99  
BETWEEN

PETER KIENDE MWAURA.....APPLICANT  
AND  
REPUBLIC.....RESPONDENT

(Application for extension of time to file a memorandum  
of appeal from a judgment of the High Court of Kenya  
at Nyeri (Lady Justice Ang'awa) dated 22.2.99

in

H.C.CR.APPEAL NO. 101 OF 1994)

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**RULING**

The delay involved in this application to extend time within which to file a memorandum of appeal, as applied for in the Notice of Motion filed on 7.5.99, is some three years. But for the reasons which appeal hereunder, I would have had no limitation in dismissing the application.

The applicant was convicted by the Senior Resident Magistrate of robbery with violence and sentenced to death. His appeal to the High Court, was dismissed by Ang'awa, J., on 22.2.95. It is the judgment of Ang'awa, J., which she has designated as a "Ruling", which has given me some disquiet. The main issue in the appeal, being whether the version of events by the prosecution witnesses identified by the learned judge as "P.W.2 and P.W.5", proved the guilt of the applicant beyond all reasonable doubt, requires the learned judge to make a fair and comprehensive finding on the issue. Her rather casual and confusing consideration of this issue in my view, leaves a lot to be desired, particularly when the applicant has been convicted of a capital offence. Some of her language lacks logic and comprehension such as the following:-

"It is true that the applicant was innocent and had been hijacked, he would not have kicked the lamp over so that there was darkness when he heard the vehicle coming to the scene to take him away was coming. ...."

This Court notes the argument put forward by his counsel.

That the appellant's story ought to be believed.

That in fact he was not part of the robbers who came to attack the complainant. Unfortunately counsel for the appellant failed to rely on any case law....."

It is for the foregoing reasons, that exercising my unfettered discretion under Rule 4 of our Rules, I hereby extend time as applied for, for another 30 days from today. In the meantime, the Memorandum of Appeal annexed to the affidavit of John Khaminwa of 5.5.98, in support of the Notice of Motion filed on 7.5.99, shall be deemed to have been filed in time.

Dated and delivered at Nyeri this 25th day of October, 1999.

A.M. AKIWUMI

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JUDGE OF APPEAL

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

**DEPUTY REGISTRAR.**