



**Waimiri v Republic (Criminal Application E027 of 2025)
[2025] KECA 1752 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1752 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E027 OF 2025
S OLE KANTAI, JA
OCTOBER 24, 2025**

BETWEEN

MICHAEL GITHINJI WAIMIRI APPLICANT

AND

REPUBLIC RESPONDENT

(An application for extension of time to file the Notice of Appeal out of time against the Judgment of the High Court of Kenya at Nyeri (Ong'udi & Githua, JJ.) delivered on 4th July, 2014 in H.C. CRA No. 238 of 2012)

RULING

1. The applicant, Michael Githinji Waimiri has applied by Motion that he be granted a waiver of fees; that time to lodge an appeal be extended and/or that notice of appeal lodged out of time be deemed as properly filed with leave of the Court. He explains in grounds in support of the Motion and in a supporting affidavit that he is serving time in prison and his family is poor; that he is unable to raise Court fees required for preparation of record of appeal due to his incarceration in prison; that his constitutional right to appeal will be threatened if the application is not granted; that his intended appeal has high chances of success; that his notice of appeal lodged out of time was occasioned by the High Court failing to deliver the High Court file and records for his perusal and preparation to enable him file an appeal on time and that the omission was not intentional. Further, that he was arrested on 10th March, 2010; charged with the offence of robbery with violence contrary to section 296(2) of the Penal Code; was convicted and sentenced to death which was later commuted to life imprisonment; his appeals to the High Court at Kerugoya were dismissed. That dissatisfied with those findings he filed an appeal to the Court of Appeal at Nyeri which Court set aside the death sentence and replaced it



with a sentence of 30 years imprisonment on 29th January, 2021, the sentence to commence from date of conviction; that the Court of Appeal specifically stated:

“(we) substitute therefore sentence to imprisonment for a term of thirty (30) years with effect from 6th December, 2013 when the initial sentence was passed.”

2. He says that the provisions of section 333(2) of the *Criminal Procedure Code* were not applied; that he in the circumstances filed an application for revision of sentence in the High Court at Kerugoya; that the Judge there refused to deal with the matter but gave him leave to appeal to this Court; that this Court should protect the principles set out in the *Constitution*. He prays that the Court reviews the order that the sentence of 30 years imprisonment and/or take into account the total time spent in custody within the meaning of section 333(2) of the said Code.
3. I have seen written submissions by both sides.
4. The applicant repeats what he has stated in the Motion and affidavit and on extension of time he cites the Supreme Court case of *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR for the proposition that a “plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour.”; that he has given a valid reason for delay. He then goes into proposed grounds of appeal submitting that the court erred in law for failing to properly account for the time he had spent in pre-trial custody when sentencing him where it ordered the 30 year sentence run from the date of the initial conviction “...without demonstrably deducting the pre-trial custody period...” He says that he was in custody from when he was arrested on 10th March, 2010 until his conviction on 6th December, 2012 which period should have been accounted for. He therefore submits that the intended appeal is arguable with high chances of success; that failure to account for a period of “nearly three years of pre-trial detention” has resulted in a sentence that is excessive and unjust in the circumstances.
5. The respondent in written submissions does not oppose the application.
6. I have considered the Motion.
7. The applicant has travelled nearly all the spectrum of our Courts where he was tried and convicted by the Magistrates Court, he appealed to the High Court where his appeal was dismissed; he further appealed to the Court of Appeal and his appeal was partly allowed where the initial sentence was reduced. He went back to the High Court to argue a point on period served pre-trial but the Judge there informed him that the High Court should not deal with an issue that has been dealt with by this Court. That is why the applicant is here asking me to extend time to enable him come to this Court.
8. The point the applicant wants to take on appeal to this Court relates to section 333(2) of the *Criminal Procedure Code* where a convict is entitled to credit time for period served in custody pre- conviction and sentence. This is not a novel point and has been considered by this Court and the High Court.
9. The applicant wants to argue, on appeal, that the Court of Appeal on sentencing him did not consider the period he had served before conviction. He says that he is a convict in prison; record of the High Court was not availed to him on time to enable him to appeal on time; that he and his family are poor, cannot afford Court fees and that poverty may have led to their inability to have things at the High Court done on time. These, to me, are valid reasons in a consideration of an application of this nature.
10. Although the respondent does not oppose the application and although I have no duty to do this I note that the applicant was convicted for the offence of robbery with violence. The Supreme Court of Kenya in “Muruatetu 2” (*Francis Karioko Muruatetu & Another v Republic* [2021] eKLR), in directions stated that its holding in “Muruatetu 1” (*Francis Karioko Muruatetu & Another v Republic*



[2017] eKLR) only applied to convictions for murder. This should raise an interesting point where the Court of Appeal reduced the death sentence in a robbery with violence conviction to a sentence of imprisonment for 30 years. Is the applicant in danger of the original sentence being restored? That question, it is not for me to answer.

11. Having said that, I allow the Motion. Let appeal be filed within fourteen (14) days. I waive Court fees which the applicant says he cannot afford.

DATED AND DELIVERED AT NYERI THIS 24TH DAY OF OCTOBER, 2025.

S. OLE KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

