



**Lorunyok v Republic (Criminal Application E056 of 2024)
[2025] KECA 411 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KECA 411 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E056 OF 2024
W KARANJA, J MOHAMMED & LK KIMARU, JJA
FEBRUARY 21, 2025**

BETWEEN

JOSEPH LOKWAWI LORUNYOK APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application to file an appeal as a pauper from the judgment of the High Court of Kenya at Nyeri dated 30th April 2024 in HCCR Petition No. E009 of 2021)

RULING

1. Joseph Lokwawi Lorunyok, the applicant, was arraigned, and tried at the Rumuruti Senior Resident Magistrate’s Court in Criminal Case No 654 of 2003 for the offence of robbery with violence contrary to section 296(2) of the Penal Code. He was found guilty and sentenced to death.
2. His appeals to the High Court and this Court on both conviction and sentence were dismissed on merit.
3. The applicant had reached the end of his appellate journey with the Court of Appeal’s decision on his appeal when, rather unexpectedly, the famous Francis Karioko Muruatetu & another v Republic, Petition No 15 of 2015 [2017] eKLR was decided by the Supreme Court. The decision, though not outlawing the death sentence displaced the hitherto mandatory aspect of the death sentence and pronounced that the courts had discretion to pass sentences other than the death sentence in murder cases. The Supreme Court also decreed that the decision would apply retroactively and persons serving death sentences for murder were at liberty to apply for re-sentencing before the trial court. It is not clear from the application before us whether that is the decision that stirred the applicant to action. He filed a Petition, being Nyeri High Court Criminal Petition No 009 of 2021, seeking a declaration that the sentence he was serving violated his constitutional rights. The petition was dismissed. He has not filed any appeal against that decision.



- 4. Instead, the applicant has come back to this Court by way of an undated notice of motion which raises all manner of issues. Among the orders he is seeking are that he be allowed to file the appeal as a pauper; several declarations including a declaration that “he be guaranteed the benefits of the least severe sentence”. He also asks the Court to send him back to the trial court for re- sentencing.
- 5. From his written submissions filed in Court, the applicant seems to be challenging the constitutionality of the death sentence as well as its propriety in the circumstances of his case.
- 6. When the matter came up for plenary hearing, the applicant relied on his submissions and asked the Court to give him a definite sentence.
- 7. On his part, learned State Counsel, Mr. Naulikha submitted that the application has no basis in law; that there is an end to litigation; that this Court is ex officio in this matter and the same should, therefore, be dismissed.
- 8. We have considered the application along with the submissions filed by the applicant in support and the brief response thereto by learned counsel for the State.
- 9. First and foremost, we note that the applicant has not filed any Notice of Appeal before this Court as required under Rule 61 of the Court of Appeal Rules. Our jurisdiction has not, therefore, been invoked as provided for under Article 164 of the Constitution or under the Rules of this Court. He cannot seek to appeal as a pauper against an appeal he is yet to lodge a notice of appeal against. We note further, that the decision of Muya, J. which the applicant indicates he intends to appeal against was rendered on 30th April 2024, and there is no order extending time to appeal out of time.
- 10. Whichever way one may look at this application, our inevitable conclusion is that the application is totally devoid of merit and it is hereby dismissed.

DATED AND DELIVERED AT NYERI THIS 21ST DAY OF FEBRUARY 2025.

W. KARANJA

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JUDGE OF APPEAL

JAMILA MOHAMMED

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

