



**Kariuki v Republic (Criminal Application E011 of 2025)
[2025] KECA 597 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KECA 597 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E011 OF 2025
S OLE KANTAI, JA
MARCH 28, 2025**

BETWEEN

ALEX MAINA KARIUKI APPELLANT

AND

REPUBLIC RESPONDENT

(An application for extension of time to file a Record of Appeal against the Judgment of the High Court at Nyeri (Muya, J.) delivered on 18th May, 2023 in HC Criminal Case No. 06 of 2018)

RULING

1. The applicant Alex Maina Kariuki applies in the Motion said to be brought under rule 113 of the Court of Appeal Rules, 2010 that the time to lodge an appeal be extended and notice of appeal filed out of time be deemed as properly filed. He also prays that court fees be waived as he is a pauper. In grounds in support of the application and in his supporting affidavit he says that he is in prison custody and is a pauper; that he is entitled to appeal and that the intended appeal has high chances of success; that he did not appeal on time as he was not supplied with court records to enable him appeal on time. The application is dated 30th January, 2025 by the applicant who is a convict at Nyeri Maximum Prison and is forwarded to Court by the Officer in Charge of that prison on 4th February, 2025. The applicant says in the supporting affidavit that he was tried and convicted by the Magistrates Court for the offence of defilement and was sentenced to 15 years imprisonment; that his appeal was dismissed by Muya, J. in a judgment delivered on 18th May, 2023.
2. I note that a hearing notice was served on 7th March, 2025 at 12. 41 p.m. on nyeri@odpp.go.ke and nyerimaximumprison@gmail.com where parties were informed of hearing date and required to file written submissions. I have not seen any written submissions by either side.



3. The principles that apply in an application of this nature were set out in the case of *Fakir Mohamed vs. Joseph Mugambi & 2 Others* in Civil Application No. 33 of 2004 as follows:

The exercise of this court’s discretion under Rule 4 has followed a well beaten path since the stricture ‘sufficient reason’ was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if application is granted, the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance – are all relevant but not exhaustive factors: See *Mutiso vs. Mwangi* Civil Application No. Nai. 255 of 1997 (ur), *Mwangi vs. Kenya Airways Limited* [2003] KLR 486, *Major Joseph Mwereri Igweta vs. Mulika M’Ethare and Attorney General*, Civil Application No. Nai 8/2000 (ur) and *Murai vs. Wainana* (No. 4) [1982] KLR 38.”

4. The appeal to the High Court which it is intended to be appealed was delivered on 18th May, 2023 while the application here is dated 30th January, 2025. The applicant says that he was not supplied with record of the proceedings of the High Court on time to enable him appeal. I note that the applicant is unrepresented and is a convict in prison who may not have ready or adequate or reasonable facilities to enable him appeal on time.
5. I do not think that there is unreasonable delay in bringing the application in those circumstances. I allow the application. Let notice of appeal be lodged within fourteen (14) days and record of appeal be lodged twenty one (21) days thereafter. I hereby waive court fees, the applicant be treated as a pauper as applied.

DATED AND DELIVERED AT NYERI THIS 28TH DAY OF MARCH, 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

