



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyabaru v Republic (Criminal Application E028 of 2024)  
[2025] KECA 633 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KECA 633 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION E028 OF 2024**

**LK KIMARU, JA**

**APRIL 4, 2025**

**BETWEEN**

**VICTOR NYARIKI NYABARU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for extension of time to appeal out of time from  
the Judgment of the High Court of Kenya at Kisii (Patricia Gichoi,  
J), Dated 8th December, 2023 in HC CRA. Case No. E006 of 2022)*

**RULING**

1. The applicant, Victor Nyariki Nyabaru, was charged, tried and convicted for the offence of robbery with violence contrary to section 296(2) of the *Penal Code*. He was sentenced to death by the trial Magistrate's court at Kisii. His first appeal to the High Court (P. Gichohi, J) was dismissed on 8<sup>th</sup> December, 2023.
2. The applicant wishes to exercise his right of second and final appeal to this Court. He has moved this Court by notice of motion under Rule 4 of the *Court of Appeal Rules, 2022*, to be granted leave to appeal out of time. The applicant explains the reason for the delay in lodging the appeal in time to the fact that he was unable to obtain the typed and certified copies of the proceedings and judgment in time from the High court. The applicant annexed a draft memorandum of appeal which, in his view, raises arguable grounds of appeal, including the assertion that he was not properly identified at the scene of crime.
3. The respondent is not opposed to the Court granting the applicant leave to appeal out of time.
4. This Court is satisfied by the reason advanced by the applicant for his failure to lodge the appeal in time. More importantly, since the applicant has been sentenced to serve the severest of the punishment



available in the *Penal Code*, it is only just and fair, in the circumstances, to allow the applicant to exercise his right of second appeal to this Court.

5. In the premises therefor, the application is allowed. The applicant is granted leave to appeal out of time. The notice of appeal shall be filed and served within fourteen (14) days of today's date.

**DATED AND DELIVERED AT KISUMU THIS 4<sup>TH</sup> DAY OF APRIL, 2025.**

**L. KIMARU**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of original.

**DEPUTY REGISTRAR.**

