



**Republic v Mutugu & 5 others (Criminal Application  
E211 of 2024) [2025] KECA 779 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KECA 779 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CRIMINAL APPLICATION E211 OF 2024**

**JM NGUGI, JA**

**MAY 9, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**PATRICK MURATHIMI MUTUGU ..... 1<sup>ST</sup> RESPONDENT**

**ELIUD NGANGA MUIRURI ..... 2<sup>ND</sup> RESPONDENT**

**EDWIN MUTUGU WANJIRU ..... 3<sup>RD</sup> RESPONDENT**

**MARGARET WANGUI KIBATHI ..... 4<sup>TH</sup> RESPONDENT**

**SIMON MBUA WANJIKU ..... 5<sup>TH</sup> RESPONDENT**

**ANNE WANJIRU ..... 6<sup>TH</sup> RESPONDENT**

*(Being an Application for Extension of Time to appeal against the Ruling of the High Court of Kenya at Kiambu, (Chepkwony, J.) dated 4th June, 2024 in HCCRC No. E014 of 2024)*

**RULING**

1. The application before me is dated 8<sup>th</sup> July, 2024. It is by the Director of Public Prosecutions (DPP). It seeks the following prayers:

1. That this Honourable Court be pleased to extend time to enable the Applicant file a Notice of Appeal against the Ruling of the High Court of Kenya at Kiambu (Hon. D. O. Chepkwony, J) (hereinafter, the learned judge) delivered at Kiambu on 4<sup>th</sup> June 2024 in Republic vs. Patrick Murathimi Matugu & 5 Others (Kiambu High Court Criminal Case No. Appeal No. E014 of 2024) in which the learned judge declined the Applicant’s application to issue a warrant of arrest against the 1<sup>st</sup> Accused Person (hereinafter, the impugned Ruling).



2. That in the alternative, this Honourable Court be pleased to order that the Draft Notice of Appeal dated 8<sup>th</sup> July 2024 attached to the Supporting Affidavit hereto be deemed as having been filed within time.
3. The Deputy Registrar of the High Court of Kenya at Kiambu be directed to accordingly lodge the said attached Draft Notice of Appeal to enable service thereon on the Respondent.
2. The application is supported by the affidavit of Corporal Reuben Mwaniki, a Police Officer attached to the Directorate of Criminal Investigations (DCI) headquarters within the Homicide Division dated 9<sup>th</sup> July, 2024.
2. There was no response filed by any of the respondents. I have had sight of the Hearing Notice dated 26<sup>th</sup> March, 2025; and I am satisfied that it was served on the respondents and/or their advocates. The application is, therefore, unopposed.
3. Pursuant to directions given by the Honourable Deputy Registrar, the applicant also filed written submissions dated 23<sup>rd</sup> July, 2024 as well as Digest of Cases and authorities of even date. I have keenly read all of them.
4. The gravamen of the application is that the applicant is keen to appeal against a ruling delivered by Chepkwony, J. dated 4<sup>th</sup> June, 2024 in Kiambu High Court Criminal Case No. E014 of 2024: Republic v Patrick Murathimi Mutugu & 5 Others.  
  
In the impugned ruling, the learned Judge dismissed an application by the DPP for the court to issue a warrant of arrest against the 1<sup>st</sup> respondent for the offence of murder with which he has been charged in the criminal case before the High Court.
6. The application by the DPP for the issuance of a warrant of arrest was precipitated by the fact that the 1<sup>st</sup> respondent is out of jurisdiction being resident in the United States of America. According to the DPP, investigations had shown that the 1<sup>st</sup> respondent is a principal offender in the murder of one Dorothy Wambui Kiaraho by planning, financing and conspiring to commit the murder. The 2<sup>nd</sup> – 6<sup>th</sup> respondents are the co- accused in the murder trial.
7. When the DPP made the application for the issuance of a warrant of arrest against the 1<sup>st</sup> respondent at the High Court, the learned Judge declined to issue it primarily for the reason that the 1<sup>st</sup> respondent is absent in the jurisdiction and the proceedings could not, therefore, be undertaken absent proper extradition proceedings commenced in the magistrate’s court “as the proper forum”. The decision and reasoning is contained in the ruling dated 4<sup>th</sup> June, 2024.
8. The DPP is persuaded that the decision and reasoning of the learned Judge is plainly wrong and is concerned about its impact not only in wrongly shielding the 1<sup>st</sup> respondent from bona fide criminal prosecution but also on its implications for future cases especially in the subordinate courts which will be bound by that decision. The DPP is, thus, desirous of appealing against the decision. However, the DPP was late in filing the  
  
Notice of Appeal hence the present application for extension of time to file the Notice of Appeal.
9. This Court is empowered to grant extension of time under Rule 4 of the Court of Appeal Rules which provides that:

“The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a



reference in these Rules to any such time shall be construed as a reference to that time as extended.”

10. The principles on which this Court may exercise the discretion to extend time under Rule 4 were set out in *Leo Sila Mutiso v Hellen Wangari Mwangi* 2 EA 231 in which it was held as follows:

“It is now settled that the decision whether to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this court takes in to account in deciding whether to grant an extension of time are, first the length of the delay, secondly the reasons for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly the degree of prejudice to the respondent if the application is granted.”

11. In the present case, the applicant says that the delay in bringing the application is not inordinate. The impugned ruling was delivered on 4<sup>th</sup> of June, 2024 while the present application was lodged on 8<sup>th</sup> July, 2024. The applicant explains that the reason for the delay was that the concerned prosecutor was awaiting instructions from the DPP in order to lodge the appeal. The applicant argues that the appeal has overwhelming chances of success. He says so based on what he says is plain reading of the law that the process of extradition of an accused person from another jurisdiction must begin with the issuance of a warrant of arrest for the charges the suspect is to face in the court with relevant jurisdiction over the committed offence. The DPP argues that the learned Judge completely misapplied the law on the subject and is concerned that the precedent so set would confuse lower courts and lead to miscarriage of justice.
12. I agree with the applicant on all scores. The delay in this case is less than twenty (20) days. That is hardly inordinate. The explanation given by the applicant for the delay is plausible; and, in the absence of any contestation by the respondents, I find it credible. Finally, I agree that the intended appeal is plainly arguable. The main issue taken up is whether the learned Judge was correct in her interpretation of the law that the applicant was obliged to take up extradition proceedings in the magistrate’s court first while the High Court has exclusive jurisdiction to try murder cases and is, therefore, the only court that can issue a warrant of arrest respecting the charges against the 1<sup>st</sup> respondent. In my view that is a serious issue to be determined by this Court on appeal.
13. All in all, therefore, I am satisfied that the applicant is entitled to the deployment of judicial discretion under Rule 4 of the Court of Appeal Rules for the extension of time.
14. Consequently, the application dated 8<sup>th</sup> July, 2024 is allowed. The applicant is permitted to file and serve a Notice of Appeal within seven (7) days of the date hereof.
15. There will be no order as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF MAY, 2025.**

**JOEL NGUGI**

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**JUDGE OF APPEAL**

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

*Signed*

Deputy Registrar

