



**Serem v Republic (Criminal Application E030 of 2024)
[2025] KECA 1058 (KLR) (13 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1058 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E030 OF 2024
HA OMONDI, JA
JUNE 13, 2025**

BETWEEN

ENOCK SEREM APPLICANT

AND

REPUBLIC RESPONDENT

(An application for extension of time to file an appeal out of time from the decision of the High Court at Kakamega (Kimaru, Thurania, JJ.) dated 8th December, 2011 in HCCRA NO. 147 of 2008)

RULING

1. Enock Serem, the applicant herein, was charged and convicted for the offence of robbery with violence contrary to section 296(2) of the penal code in the original criminal case No. 2621 of 2007. The particulars of the offence were that on the 30th day of August, 2007 at Chemuche village in Musinga Sub- location within Eldoret West District, while armed with dangerous weapons jointly with others not before court robbed Timothy Sambai and his brother, off their belongings namely two mobile phones make Nokia1100 and Nokia 110 both worth 16,000/= and were left naked on the way at night. Upon conviction he was sentenced to suffer death by the trial court.
2. Aggrieved with the trial court’s decision he appealed on both conviction and sentence and the same was dismissed in the High Court Criminal Appeal No. 147 of 2008, on 8th December, 2011 (Kimaru, Thurania, JJ). Dissatisfied by that outcome, the applicant wished to appeal to this Court, and had banked on his family to help raise funds to enable him engage an advocate to file the appeal. However, it was only after the lapse of the 14 days period that he realised no funds were available, and copies of the proceedings and judgement had not been availed to him; and the time within which to file his appeal had lapsed. He has therefore filed this notice of motion dated 9th May, 2024, seeking leave to file and serve his appeal out of time, against sentence only.



3. He explains that the High Court set aside the death sentence imposed and which was commuted to life imprisonment by the President of the Republic; and he would wish to pursue a second appeal in the hope that consideration would be given the period already served of over seventeen (17) years to be enough punishment or reduce it to minimum of fifteen (15) years.
4. The respondent did not file any reaction to the application. The power to extend time is a discretionary one, but is only exercise-able by the court upon a satisfactory reason being given; further, that the entire period of delay has to be stated and reasonably explained to the satisfaction of the court; and that the Court is obliged to also consider whether the intended appeal is arguable and has chances of success, hence not frivolous.
5. I have considered the application, the grounds in support thereof, submissions filed and bearing in mind that in an application of this nature, the court is allowed to exercise its discretion. The issue for determination is whether the applicant is deserving of the orders sought. The discretion that I am called to exercise in the determination of this application is unfettered and is provided under rule 4 of the [Court of Appeal Rules](#) which provides as follows:

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.

6. Rule 4 of the [Court of Appeal Rules](#) does not provide for factors the court ought to consider in an application for extension of time but courts have devised appropriate principles to be applied in achieving a ‘just’ decision in the circumstances of each case. The case of *Leo Sila Mutiso vs. Hellen Wangari Mwangi* [1999] 2 EA 231 which is the locus classicus, laid down the parameters as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first the length of the delay, secondly, the reason 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.”

7. In [Muringa Company Ltd vs. Archdiocese of Nairobi Registered Trustees](#), Civil Application No.190 of 2019 observed that:

“Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.”

8. How long was the delay in this instance? 14 years (fourteen) years. What was the reason? Lack of funds to instruct an advocate; and lack of copy of proceedings and judgment, yet, there is nothing to demonstrate that the applicant ever requested to be supplied with a copy of the records. Apart from



that, the nature of sentence the applicant is challenging has since taken a definite dimension following pronouncements by the Supreme Court of Kenya regarding the mandatory death sentence in capital offences in its decision in *Francis Karioko Muruatetu & Another vs. Republic; Katiba Institute & 5 Others (Amicus Curiae)* (2021) eKLR (popularly referred to as Muruatetu II) actually predisposes the applicant to a prejudicial outcome in the event that this application is allowed as the decision categorically stated that its decision in 2017 in *Francis Karioko Muruatetu & Another vs. Republic* [2017] eKLR applied only in respect to sentences under sections 203 as read with section 204 of the *Penal Code* and that it did not invalidate mandatory sentences or minimum sentences in the *Penal Code*, the Sexual Offences Act or any other statute. The applicant does not have an arguable appeal with even a scintilla of success, and there is no merit in his application. The application is thus dismissed.

DATED AND DELIVERED AT KISUMU THIS 13TH DAY OF JUNE, 2025.

H. A. OMONDI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

