



REPUBLIC OF KENYA



KENYA LAW
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**Waminila v Republic (Criminal Application E009 of 2024)
[2025] KECA 1274 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1274 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CRIMINAL APPLICATION E009 OF 2024**

DK MUSINGA, JA

JULY 11, 2025

BETWEEN

FRED WAFULA WAMINILA APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for leave to file an appeal out of time from
the Ruling of the High Court of Kenya (Kimondo, J.) delivered on
13th July 2023 in Misc. Criminal Application No. E240 of 2022)*

RULING

1. On 17th January 1996 the applicants were convicted of robbery with violence and sentenced to death in accordance with the prevailing law then. In 2009, all death sentences were commuted to life imprisonment through a presidential decree.
2. Being dissatisfied with their conviction and sentence they preferred an appeal to the High Court, which dismissed the appeal on 25th March 2014.
3. Undeterred, the applicants preferred a second appeal to this Court, but on 21st January 2020 they withdrew it so that they could pursue resentencing at the trial court pursuant to the jurisprudence that had emerged from the Supreme Court's judgment in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR.
4. The applicants' resentencing application was determined on 25th March 2021. The trial magistrate held, *inter alia*:

“...looking at the probation officer's report and mitigation and aggravating factors and giving credit to time served, I hereby set aside the life sentence imposed against applicants. I



therefore resentence the applicants to 70 years' imprisonment commencing the date of sentence before the trial court on 17/01/1996. Right of appeal explained.”

5. Thereafter the applicants filed a Revision application before the High Court, which was dismissed on 5th May 2022. They instituted yet another Revision application before the High Court, which was similarly dismissed on 13th July 2023.
6. On 30th January 2024 the applicants filed an application under section 361 of the *Criminal Procedure Code* and rule 70(3) of this Court's Rules seeking leave to file an appeal out of time. Section 361(1) states as follows:

“Second appeals

1. A party to an appeal from a subordinate court may, subject to subsection (8), appeal against a decision of the High Court in its appellate jurisdiction on a matter of law, and the Court of Appeal shall not hear an appeal under this section—
 - a. on a matter of fact, and severity of sentence is a matter of fact; or
 - b. against sentence, except where a sentence has been enhanced by the High Court, unless the subordinate court had no power under section 7 to pass that sentence.”
7. Whereas under section 341 of the *Criminal Procedure Code* the Court to which an appeal is made may for good cause admit an appeal after the period of fourteen days has elapsed, section 361(1) is explicit that this Court shall not hear an appeal regarding severity of sentence, which is a matter of fact. The applicants' Revision application was in respect of sentence, not conviction.
8. This application is therefore devoid of merit and I dismiss it.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF JULY 2025.

D. K. MUSINGA (PRESIDENT)

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

