



REPUBLIC OF KENYA



KENYA LAW
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**Mathenge v Republic (Criminal Appeal (Application)
E007 of 2024) [2024] KECA 909 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KECA 909 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL (APPLICATION) E007 OF 2024**

JM MATIVO, JA

JUNE 20, 2024

BETWEEN

SIMON NJUGUNA MATHENGE APPELLANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to file an appeal out of time from the Judgment of the High Court of Kenya at Nyahururu (C.M Kariuki, J.) dated 7th March 2024 in HCCRA No. 4 of 2021 Criminal Case No. 1336 of 2016)

RULING

1. The applicant, Simon Njuguna Mathenge moved this Court by an application dated 26th March 2024 seeking extension of time to appeal to appeal against the judgment issued in HCCRA No. E024 of 2021 on 3rd November 2023.
2. The applicant, Simon Njuguna Mathenge, together with four others were charged before the Senior Resident Magistrate Court in Criminal Case No. 1326 of 2016 at Nyahururu with nine counts of the offence of robbery with violence contrary to section 296 (2) of the *Penal Code*. The appellant was sentence to death on count 2 and 3, on count 5, 6 and 7, the applicant was sentenced to life imprisonment and on count 8 the appellant was sentenced to 10 years which were held in abeyance.
3. His appeal against conviction and sentence was dismissed and the sentence by the Senior Resident Magistrate affirmed. He was unable to lodge his appeal within time owing to the reasons stated in his application. He now seeks leave to appeal out of time.
4. Mr. Omutelema, learned counsel for the respondent has in his submissions supported the application. I agree with learned counsel that the applicant deserves this Court's discretion under Rule 4 of the *Court of Appeal Rules, 2022*. Accordingly, I allow the application and direct the applicant to file a Notice of Appeal within 14 days and a Record of Appeal within 30 days from the date of this ruling.



DATED AND DELIVERED AT NAKURU THIS 20TH OF JUNE, 2024.

J. MATIVO

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

