



**Mathenge v Republic (Criminal Application E019 of 2024)  
[2024] KECA 962 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 962 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E019 OF 2024  
WK KORIR, JA  
JULY 26, 2024  
(IN CHAMBERS)**

**BETWEEN**

**SIMON NJUGUNA MATHENGE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for leave to appeal out of time against the judgment of the High Court of Kenya at Nyandarua (C. Kariuki, J.) delivered on 7th March 2024 in H.C.CR.A. No. 04 of 2021)*

**RULING**

1. Although the applicant, Simon Njuguna Mathenge, in his application dated 8<sup>th</sup> April 2024 indicates that he seeks extension of time to appeal against the decision in Nyahururu Principal Magistrate's Court Criminal Case No. 1326 of 2016, it is apparent that what he actually seeks is leave to appeal out of time against the judgment delivered by C. Kariuki J. on 7<sup>th</sup> March 2024 in Nyandarua High Court Criminal Appeal No. 04 of 2021.
2. It is the applicant's case that his appeal from the decision of the magistrate's court against conviction and sentence for the offence of robbery with violence contrary to section 296(2) of the *Penal Code* was dismissed by C. Kariuki J. on 7<sup>th</sup> March 2024 and he now wishes to appeal to this Court, on among other grounds, that he was not positively identified and that the elements of the offence of robbery with violence were not proved by the prosecution.
3. The reason given for the delay in filing the appeal within the prescribed period is that the proceedings and judgment of the first appellate court were supplied late.
4. There is no response to the application.



5. Considering the reason advanced by the applicant to explain the delay, and appreciating that the delay was not inordinate as it was for only about 17 days, I find that the applicant should be given an opportunity to pursue his intended appeal.
6. In the circumstances, the application for extension of time for filing a notice of appeal is allowed. In view of the fact that the applicant has annexed to the application a notice of appeal and a memorandum of appeal, the stated documents are deemed as duly filed.

**DATED AND DELIVERED AT NAKURU THIS 26<sup>TH</sup> DAY OF JULY, 2024**

**W. KORIR**

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

