



**Mureithi v Republic (Criminal Application E015 of 2024)
[2024] KECA 925 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 925 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E015 OF 2024
WK KORIR, JA
JULY 26, 2024**

BETWEEN

ROBERT MWIRIGI MUREITHI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for leave to file a Notice of Appeal out of time
against the judgment and decree of the High Court at Naivasha (F. Rayola,
J) issued and dated 30th October 2023 in HCCRA No. E008 OF 2022)*

RULING

1. The applicant, Robert Mwirigi Mureithi, has moved the Court through an undated notice of motion seeking enlargement of time to file his notice of appeal. The application is premised on the grounds contained in the supporting affidavit sworn by the applicant on 31st October 2023.
2. The respondent did not file a replying affidavit in response to the application. Nevertheless, by the time the application came up for hearing on 18th July 2024, the respondent had filed submissions. On his part, the applicant did not file any submissions.
3. In the respondent's submissions, it is asserted that a perusal of the High Court file discloses that the applicant filed a notice of appeal within the prescribed period. Counsel referred to rule 69 of the Court of Appeal Rules to urge that by submitting the notice of appeal to the officer-in-charge of the prison facility where he was being held, it was deemed that the applicant's notice of appeal had been duly filed. It was therefore counsel's submission that the notice of appeal in Nakuru Criminal Appeal No. 48 of 2019 was filed within time hence the present application was not necessary.
4. Although counsel for the respondent has submitted that this application is unnecessary as the notice of appeal was lodged in accordance with rule 69 of the Court of Appeal Rules, 2022, I must, however,



point out that the statement by counsel has been made in the submissions and not through an affidavit. Further, the notice of appeal allegedly filed in the High Court has not been exhibited before this Court. In the circumstances, no evidence has been adduced to confirm that the applicant did indeed file a notice of appeal within the prescribed period. His application cannot therefore be rejected for being unnecessary.

5. Turning to the substance of the application, I observe that in an application for enlargement of time premised on rule 4 of the Court of Appeal Rules, 2022, I am required to exercise my discretion judiciously based on the factors that have been highlighted in decided cases. The notice of appeal in this matter ought to have been filed by 13th November 2023. The delay is for about 7 months. Considering the period of delay against the death sentence meted upon the applicant, the delay cannot be said to be inordinate. Additionally, I am aware that the applicant may be handicapped in pursuing his intended appeal as he is incarcerated and self-representing.
6. I have also read through the annexed memorandum of appeal and the grounds set therein, and in my view, the applicant has arguable points of law deserving of consideration by the Court. In the end, I am satisfied that the applicant has met the threshold for the exercise of the discretion of this Court in his favour.
7. The upshot of the foregoing is that the notice of appeal previously filed by the applicant be and is hereby deemed to have been duly filed. The time for all the other activities consequent to the filing of a notice of appeal shall be as per the rules of the Court and time will run from the date of this ruling.

DATED AND DELIVERED AT NAKURU THIS 26TH DAY OF JULY, 2024

W. KORIR

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

