



**Musa v Republic (Criminal Application E031 of 2024)
[2024] KECA 995 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 995 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E031 OF 2024
A ALI-ARONI, JA
JULY 26, 2024**

BETWEEN

WILLIAM MAKANGA MUSA APPLICANT

AND

REPUBLIC RESPONDENT

(An appeal against the conviction and sentence in the Judgment of the High Court of Kenya at Naivasha (R. Mwongo, J.) delivered on 27th September 2018 in HCCRA No. 123 of 2015)

RULING

1. Before the court is an application by way of a notice of motion dated 15th August, 2023 brought under Article 22 & 258 seeking to appeal out of time. The application is predicated on the grounds on the face of the application that; the applicant was charged, convicted, and sentenced for the offence of robbery with violence contrary to Section 296(2) of the Penal Code; and that the applicant seeks to appeal out of time.
2. The application is further supported by the affidavit of the applicant in which he deposes that he was charged with the offence of robbery contrary to Section 296(2) of the Penal Code; that the applicant could not appeal on time because he relied on his relatives who promised to hire a lawyer for him but could not do so due to financial constraints; that due to the applicant's earlier intention to appeal, the applicant begs leave of this Court to appeal out of time.
3. The respondent has filed submissions dated 5th July 2024 and submits that though the delay in filing his appeal is inordinate, the applicant's sentence is lengthy and given the nature of the sentence, being life imprisonment, the respondent does not oppose the application for leave to lodge a notice of appeal out of time.
4. I have considered the application, the supporting affidavit, and the submissions. The issue for determination is whether the applicant deserves the orders sought. Rule 4 of this Court's Rules governs



the extension of time. The Rule allows this Court to exercise discretion to extend the time limited by the Rules for doing any act authorized or required by the Rules.

In the case of *Leo Sila Mutiso vs. Helen Wangari Mwangi* [1999] 2 EA, this Court held 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: third (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.

5. There is no opposition from the respondent. Secondly, though the delay is inordinate, the applicant has advanced a plausible reason for the delay, in addition, as observed by the respondent the applicant was sentenced to life imprisonment, and bearing in mind the emerging jurisprudence on indefinite sentences this is a matter that may require further interrogation by this Court.
6. In the circumstances, the application be and is hereby allowed. The notice of appeal and memorandum of appeal annexed to the application are deemed as duly filed

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

ALI-ARONI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

SIGNED

DEPUTY REGISTRAR

