



REPUBLIC OF KENYA



**Ndimu v Republic (Criminal Application E014 of 2024)
[2024] KECA 829 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KECA 829 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E014 OF 2024**

JW LESSIT, JA

JULY 18, 2024

[IN CHAMBERS]

BETWEEN

JOSEPH SANDE NDIMU APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for extension of time to file an appeal against the judgment of the High Court of Kenya at Naivasha (Ongu'di, J.) delivered on 22nd September 2023 in HCCR APP No. E029 of 2023)

RULING

1. The application before me seeks extension of time to file an appeal against the judgment of the High Court at Naivasha (Ongu'di, J.) delivered on 22nd September 2023 in HCCR APP No. E029 of 2023. The applicant was charged and convicted at the Chief Magistrates Court at Naivasha in Criminal Case No. 716 of 2020 with the offence of Robbery with violence contrary to section 296(2) of the [Penal Code](#) and sentenced to life imprisonment. His appeal to the High Court against the judgment of the Magistrates' Court was dismissed.
2. In both the application and the supporting affidavit, the applicant attributes the delay in filing of his appeal to delay in being supplied with the original trial court's record and its judgment.
3. The applicant contends that he has an arguable appeal with high chances of success as demonstrated in his memorandum of appeal. Further that the respondent will not suffer any prejudice if the application is allowed.
4. The ODPP has through the Senior Assistant Director of Public Prosecutions, Mr. A. J. Omutelema filed submissions dated 15th July 2024. Learned Prosecution Counsel has pointed out that the



applicant's sentence of death was up held, that he admits that the sentence is heavy and therefore they do not oppose the application to give the applicant a chance to challenge the decision of the superior court, especially in the face of developing jurisprudence, as the applicant mentioned in his memorandum of appeal.

5. Rule 4 of the *Court of Appeal Rules* governs the extension of time.

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

6. I am satisfied that the applicant has explained the cause of the delay in filing his appeal. It was caused by circumstances beyond his control. I am also satisfied that he has an arguable appeal, it is not frivolous. The upshot is that I find merit in this application and accordingly, I make the following orders:

- i. I hereby allow the applicant's undated application as filed in this Court's registry.
- ii. The applicant shall file a Notice of Appeal within fourteen (14) days from date hereof.
- iii. The registry to prepare the Record of Appeal and file it and serve it on the applicant and the respondent within sixty (60) days hereof.
- iv. The registry shall thereafter place appeal before the Court for hearing.

DATED AND DELIVERED AT ELDORET THIS 18TH DAY OF JULY, 2024

J. LESIIT

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JUDGE OF APPEAL

I certify that this is a true copy of the original

signed

DEPUTY REGISTRAR

