



**Nginyu v Republic (Criminal Appeal (Application)  
E022 of 2024) [2024] KECA 779 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KECA 779 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPEAL (APPLICATION) E022 OF 2024**

**JM MATIVO, JA**

**JULY 4, 2024**

**BETWEEN**

**PAUL THUMBI NGINYU ..... APPLICANT**

**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 (Kariuki J.) dated 23rd September 2021 in HCCRA No. E003 of 2020)*

**RULING**

1. The application before me is undated. The main prayer sought is leave to appeal out of time against the judgment issued in HCCRA No. E003 of 2020 on 23<sup>rd</sup> September 2021.
2. The applicant, Paul Thumbi Nginyu, was charged, tried and convicted and sentenced to suffer death by the Chief Magistrate’s Court in Criminal Case No. 2197 of 2016, Nyahururu for the offence of robbery with violence contrary to section 295 as read with 296(2) of the [Penal Code](#). His appeal against conviction and sentence was dismissed. However, he did not lodge his notice of appeal within the statutory-stipulated time of 14 days. His present application invokes rule 4 of the [Court of Appeal Rules](#), 2022 to enlarge time to appeal. The applicant cites financial constraints and in ability to hire an advocate as the reason for the delay. The respondent in its submissions dated 3<sup>rd</sup> July 2024 support the application.
3. There has been a 2 years and 7 months delay in filing the appeal against the judgment of the High Court. The applicant’s position is that the delay was occasioned by his relatives’ financial constraint.



4. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, and stated as follows:

“the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

5. I am satisfied that this is a proper case for me to exercise my discretion in favour of the applicant. Accordingly, I allow the applicant’s application and order that the Notice of Appeal and Memorandum of Appeal be filed within 14 days. The Record of Appeal shall be filed within 45 days from today.

**DATED AND DELIVERED AT NAKURU THIS 4 OF JULY, 2024.**

**J. MATIVO**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

