



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
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**Kanyake alias Viathe v Republic (Criminal Application E040 of 2024)
[2024] KECA 1264 (KLR) (20 September 2024) (Ruling)**

Neutral citation: [2024] KECA 1264 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E040 OF 2024
S OLE KANTAI, JA
SEPTEMBER 20, 2024**

BETWEEN

HEZEKIAH NJOROGE KANYAKE ALIAS VIATHE APPLICANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the conviction and sentence from the Judgment of the High Court at Nakuru (M. Odero, J.) delivered on 23rd March, 2018 in H.C. Criminal Case No. 60 of 2012)

RULING

1. The applicant Hezekiah Njoroge Kanyake alias Viathe applies that his application be certified urgent "...and be heard on priority basis as of the procedure of a pauper."; that he be granted leave to appeal out of time against the conviction and sentence of 30 years imprisonment by Odero, J. on 23rd March, 2018 in the High Court at Nakuru Criminal Case No 60 of 2012. He says in a supporting affidavit that the offence to which he was convicted was murder; that upon conviction and sentence his relatives promised to assist him to file an appeal but they did not; that it had since dawned on him that his relatives did not file an appeal due to high lawyer fees demanded and he beseeches the court for leave to appeal out of time stating that his appeal has overwhelming chances of success as it raises "...candid points of law and facts..." He has attached a homemade Memorandum of Appeal where 2 grounds of appeal are set out.
2. There are written submissions by the respondent who explains the effect of rule 69 of the [Court of Appeal Rules, 2022](#) on the procedure where an appellant is in prison. It is submitted that the appeal by the appellant was filed on time and the application for leave to appeal out of time is unnecessary.
3. The applicant attached an undated Notice of Appeal endorsed by the Officer-in Charge, Nakuru Main Prison.



- 4. The respondent takes the position that appeal was filed on time. My view is that there is nothing lost if the position taken by the respondent is correct.
- 5. Let the applicant lodge Notice of Appeal (if he had not done so on time) within fourteen (14) days of today.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF SEPTEMBER, 2024.

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

