



**Simiyu v Republic (Criminal Application E048 of 2024)  
[2024] KECA 1281 (KLR) (20 September 2024) (Ruling)**

Neutral citation: [2024] KECA 1281 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E048 OF 2024  
S OLE KANTAI, JA  
SEPTEMBER 20, 2024**

**BETWEEN**

**ROBERT WEKESA SIMIYU ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the conviction and sentence from the  
Judgment of the High Court at Naivasha (R. Mwongo, J.) delivered  
on 16th October, 2016 in H.C. Criminal Appeal No. 21 of 2016)*

**RULING**

1. The applicant Robert Wekesa Simiyu was charged and convicted for the offence of defilement and was sentenced to life imprisonment by the Magistrate’s Court at Engineer Law Courts. He appealed to the High Court of Kenya at Naivasha in Criminal Appeal No 21 of 2016 but the appeal was dismissed.
2. In the Motion before me said to be brought under Article 50 of the *Constitution* of Kenya 2010 and section 347 *Criminal Procedure Code* it is said in the relevant part of the affidavit in support:
  3. That, I was not supplied with the copy of the original high court’s proceedings and its judgment to enable me appeal on time but had intention to appeal.
  6. That, due to my earlier intention to appeal, I beg leave of this honourable court for an extension of time to appeal out of time...”
3. The applicant has attached an undated Notice of Appeal to appeal against both conviction and sentence and a homegrown Memorandum of Appeal where 4 grounds of appeal are set out.
4. The respondent in written submissions states that there is inordinate delay in bringing the application but because of the life imprisonment imposed against the applicant the respondent does not oppose the application for extension of time.



5. The principles that govern an application like this one are well set out in the case of *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231 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 stated 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, thirdly (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."

6. The applicant has not given me much information here, the only agreed fact being that he was convicted by the trial court and his first appeal was dismissed. The applicant was sentenced to imprisonment for life. He says that he was not supplied with proceedings of the High Court to enable him appeal; that he had always intended to appeal.

7. I have looked at grounds of appeal and I think that the same are not idle; they deserve a consideration by the court on appeal.

8. I note that the respondent has literally conceded the application by stating that although there is inordinate delay the applicant should be allowed to appeal out of time.

9. I exercise my discretion and allow the application. Let the applicant lodge Notice of Appeal within fourteen (14) days of today.

**DATED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**S. OLE KANTAI**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

