



**M'Amuru v Republic (Criminal Application E121 of 2024)  
[2024] KECA 1443 (KLR) (18 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1443 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E121 OF 2024  
S OLE KANTAI, JA  
OCTOBER 18, 2024**

**BETWEEN**

**DAVID GITONGA M'AMURU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application to lodge a Notice of Appeal and an Appeal out of time from the Judgment of the High Court at Meru (A.A. Ambeya, J.) dated 20th August, 2020 in H.C. CRA No. E024 of 2021)*

**RULING**

1. The applicant David Gitonga M'Amuru has by notice of Motion moved the Court praying for extension of time to enable him appeal against judgment of the High Court of Kenya, Meru where his first appeal against conviction and sentence in a charge of defilement was dismissed. He says that he was sentenced to a life in prison by the trial court which sentence was reduced on first appeal to a 25-year prison sentence. This was in a judgment delivered on 20<sup>th</sup> August, 2020. He says that he was not furnished with a copy of the judgment to enable him appeal on time and that:  
  
“For this reason I beg this Court to grant me a chance to appeal out of time since I have now received a copy of the judgment. ...”
2. He further says that the intended appeal has high chances of success.  
He has not attached any document to the application.
3. I have seen the applicant's written submissions where he says amongst other things that he was now represented by a lawyer all through the trial and the first appeal and that it is prison authorities who have assisted him to draw this application and even got for him a copy of the judgment of the High Court.



4. I have seen the respondent's written submissions where that office states in material part that it is not opposed to the application in the interests of justice.
5. The principles that apply in an application for leave to appeal out of time are well known and were set out in the oft-cited 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. I have seen judgment of the High court in the first appeal which was delivered on 20<sup>th</sup> August, 2020. The undated homemade motion has the applicant's thumbprint and is forwarded by the Officer-in Charge Nyeri, Maximum Prison on 24<sup>th</sup> August, 2024, about 4 years after judgment was delivered. The applicant says that he was unrepresented at the High Court and that he was unable to obtain a copy of the judgment on time to enable him appeal. I accept that as a reasonable explanation for delay in filing an appeal. The delay is not inordinate considering the circumstances where the applicant is unrepresented and is a convict held up in prison. The respondent has no objection to the application and cannot be prejudiced by my exercise of direction in the applicants favour.
7. I allow the Motion. Let the applicant lodge notice of appeal within fourteen (14) days and file appeal within fourteen (14) days thereafter.

**DATED AND DELIVERED AT NYERI THIS 18<sup>TH</sup> DAY OF OCTOBER, 2024.**

**S. ole KANTAI**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

