



**Githinji v Republic (Criminal Application E103 of 2024)
[2024] KECA 1360 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1360 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E103 OF 2024
S OLE KANTAI, JA
OCTOBER 3, 2024**

BETWEEN

MICHAEL KIRIMI GITHINJI APPLICANT

AND

REPUBLIC RESPONDENT

(Being an appeal against conviction and sentence of the High Court of Kenya at Embu, dated and delivered on 29th September, 2002 in H. C. CRA No. 1 of 2002.)

RULING

1. The applicant, Michael Kirimi Githinji, in the homegrown motion on notice says that he seeks leave to appeal from the judgment in HC CRA No. 1 of 2002 at Embu where he was charged with the offence of murder.
2. He says in grounds in support of the motion that the Judge erred in law by convicting him but had failed to note that evidence of identification was based on a single identifying witness in difficult circumstances thus was not free from possibilities of errors; the other grounds just like the first one are actually grounds of appeal. He says that he was sentenced to death which he says is a harsh and degrading; that he could not appeal on time because he was not supplied with the judgment on time to enable him appeal on time. All that is repeated in his supporting affidavit.
3. He has annexed a homegrown draft memorandum of appeal where five grounds are set out. He stated in a notice of appeal that he intends to appeal against the whole decision in that case.
4. I have seen the respondent’s written submissions where it is stated at the material part that the respondent does not oppose the application to the extent that the applicant seeks leave to appeal out of the stipulated time.



5. The principles that apply in an application for extension of time are well settled 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. The applicant was convicted and sentenced for the offence of murder on 29th September, 2002. That is a long time ago. He says that he was not supplied with judgment of the High Court on time to enable him appeal. He is unrepresented.

7. For purposes of the application before me, I note that the motion is dated at Naivasha Prison on 9th July, 2024. The applicant was sentenced to death and I think in the circumstances that I should not shut him out from the appeal process. I am prepared to exercise my discretion in his favour which I hereby do. I allow the motion. Let appeal be filed within twenty one (21) days of today.

DATED AND DELIVERED AT NYERI THIS 3RD DAY OF OCTOBER, 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

