



REPUBLIC OF KENYA



**Kamau v Republic (Criminal Application E101 of 2024)  
[2024] KECA 1368 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1368 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E101 OF 2024  
S OLE KANTAI, JA  
OCTOBER 3, 2024  
[IN CHAMBERS]**

**BETWEEN**

**MARCOS GITHINJI KAMAU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application to have leave to appeal out of time to the Court of Appeal pursuant to Section 349 of the Criminal Procedure Code and any other enabling provision of the law from the decision of (Muchemi, J.) dated and delivered on 9th June, 2021 in S. O. Case No. 09 of 2021.)*

**RULING**

1. The applicant, Marcos Githinji Kamau, in the homemade notice of motion dated 9<sup>th</sup> July, 2024, states in the main that he did not appeal within the stipulated time since his relatives promised to engage an advocate for him to file an appeal on his behalf but has been informed that that was not done because lawyers asked for high fees; that the application is made pursuant to provisions of section 349 of the [Criminal Procedure Code](#) and any other enabling provisions of law.
2. I will take it that the application is brought for extension of time as provided in rule 4 of the [Court of Appeal Rules](#).
3. In a supporting affidavit, the applicant says that he was charged with the offence of defilement at the Principal Magistrate's Court at Othaya and was sentenced to 40 years imprisonment. He appealed to the High Court in HCCRA No. 09 of 2021, Nyeri which appeal was dismissed on 9<sup>th</sup> June, 2021. He then wished to appeal; his relatives promised to get a lawyer to assist him to do so but they did not leading to delay in filing an appeal.



- 4. I note that in an amended hearing notice dated 2<sup>nd</sup> September, 2024 the parties were advised of today’s hearing date and were required to file written submissions within the stipulated time.
- 5. I have seen written submissions by the applicant but none from the respondent. The applicant’s written submissions repeat what he has already said in the application.
- 6. I have considered the application.
- 7. The principles that apply in an application for leave to extend time are well settled as were set out in the oft cited case of *Leo Sila Mutiso v. Rose Hellen Wangari Mwangi*, Civil Application Nai. 251 of 1997 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.”

- 8. I note that the applicant’s appeal to the High Court of Kenya at Nyeri was dismissed on 9<sup>th</sup> June, 2021. The applicant has not informed me when he was convicted by the trial court. I note that the application before me is dated 9<sup>th</sup> July, 2024, a period of about 3 years after the first appeal was dismissed.
- 9. The applicant is not represented and he says that he was sentenced to 40 years imprisonment. He wants to challenge the conviction and sentence on appeal. He says that he was failed by his relatives who promised to engage a lawyer for him to appeal the judgment of the High Court but they did not do so. I think, in the circumstances, that I should allow him to appeal. I allow the motion. Let the applicant file an appeal within 21 days of today.

**DATED AND DELIVERED AT NYERI THIS 3<sup>RD</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**

