



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muriithi v Republic (Criminal Application E114 of 2024)  
[2024] KECA 1359 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1359 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E114 OF 2024  
S OLE KANTAI, JA  
OCTOBER 3, 2024**

**BETWEEN**

**JOHN KIHARA MURIITHI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*((An application for extension of time to lodge Notice of Appeal and Leave to file appeal out of time from the Judgment of the High Court at Nyeri (K. Magare, J.) dated 3rd June, 2024 in HC Criminal Case No. E067 of 2023.))*

**RULING**

- 1 The applicant John Kihara Muriithi prays in the Motion on notice that I be pleased to "grant leave to appeal out of time as a pauper."; that the attached "...memorandum grounds of appeal" be considered as his petition of appeal and be processed forthwith. He says in a supporting affidavit that he was convicted of a sexual offence and sentenced to life in prison; his appeal to the High Court was dismissed on conviction but the appeal on sentence succeeded where sentence was altered to be 40 years imprisonment by Magare, J. on 3<sup>rd</sup> June, 2024; that he did not appeal to this Court on time because his relatives promised to engage a lawyer to represent him but they did not do so because lawyers asked for a lot of money in legal fees and he appeals to be allowed to appeal out of time as a pauper. He has thumb printed the documents from Nyeri Maximum Security Prison.
- 2 I have seen the respondent's written submissions where that office says in material part that it does not oppose the application.



3 The principles that apply in an application for leave to extend time were set out in the oft-cited case of *Leo Sila Mutiso vs. 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

4 I note that the applicant's first appeal was dismissed on conviction on 3<sup>rd</sup> June, 2024. The application is undated but it is endorsed by the Officer-in-charge of the said prison on 3<sup>rd</sup> July, 2024. There is no unreasonable delay.

5 The applicant was sentenced to 40 years imprisonment. Although the applicant says that he has attached a Memorandum of Appeal I have not seen it.

6 I think in the circumstances that it is fair to exercise my discretion in the applicant's favour which I do. Let appeal be filed within fourteen (14) days. As the applicant says that he is a pauper I herewith waive any court fees. The Court registry to accept appeal without any fees being paid.

**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**

