



**Aswera v Republic (Criminal Application E090 of 2024)  
[2024] KECA 1342 (KLR) (2 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1342 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION E090 OF 2024  
MSA MAKHANDIA, JA  
OCTOBER 2, 2024**

**BETWEEN**

**DENNIS ASWERA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Application seeking extension of time to file and serve Record of Appeal against the Judgment of the High of Kenya at Kisii, (Kimemia, J.) dated 7th March, 2024 in HCCR. Misc. Appl. No. E03 of 2023)*

**RULING**

1. The applicant was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. He returned a no guilty plea to the information and he was tried. At the conclusion thereof, he was found guilty as charged, convicted and sentenced to death, as mandatorily required then. However, seizing on the emerging jurisprudence on mandatory nature of death sentence heralded by the Supreme Court decision in *Muruatetu & Others v Republic* [2017] eKLR, the applicant petitioned the High Court for re-sentencing. The application came before the High Court of Kenya at Kisii for hearing and in a ruling delivered on 7<sup>th</sup> March 2024, Kimemia J. dismissed the application in its entirety.
2. It is the wish of the applicant to appeal to this Court against the said decision. However, he is got up by the timelines of this court with regard to the filing of appeals which has to be within 14 days from the date of the delivery of the judgment or ruling sought to be appealed. The application is supported merely by the grounds on its face and nothing more. Though it is indicated in the application that it is supported by the applicant's affidavit, no such affidavit was annexed to the application.
3. Similarly, the applicant did not file written submissions in support of the application. It is also noted that no response by way of rebuttal to the application was filed by the respondent. This places the



court in unnecessary handicap in the fair determination of this application. That notwithstanding, the respondent has indicated in its written submissions to the application that it does not oppose the application. That concession ameliorates the situation somewhat. It is also not lost on me that the applicant is acting in person and may not be in the know regarding the intricacies of the law.

4. From the face of the application and particularly the grounds in support thereof, it is apparent that the applicant only intends to appeal against the sentence. As the intended appeal to this Court will be in the nature of a first appeal, the applicant is entitled to appeal on matters of law, fact and sentence. Much as the applicant has not provided the reasons for not filing his appeal within the prescribed time frame, the respondent is not objecting to the application on that ground, if anything, it is supporting the application and the fact that the intended appeal will be limited to the sentence of death imposed on the applicant, I will exercise my unfettered discretion in his favour and allow the application as prayed.

**DATED AND DELIVERED AT KISUMU THIS 2<sup>ND</sup> DAY OF OCTOBER, 2024.**

**ASIKE-MAKHANDIA**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**

