



**Wambui v Republic (Criminal Application E154 of 2024)  
[2024] KECA 1722 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1722 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E154 OF 2024  
A ALI-ARONI, JA  
NOVEMBER 21, 2024**

**BETWEEN**

**EDWARD KAIRO WAMBUI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for an extension of time to file an appeal out of time from the Judgment of the High Court of Kenya at Murang'a (Kagendo, J.) delivered on 30th July 2024 in HCCRA No. E127 of 2023)*

**RULING**

1. Before the court is an undated application through a notice of motion brought under rule 4 of the [Court of Appeal Rules](#), 2022 seeking leave to appeal out of time.
2. The application is predicated on the grounds on the face of the application and further supported by the affidavit of the applicant in which he deposes that he was tried in Sexual Offence Case No. 12 of 2019 at the Principal Magistrate's Court at Kigumo where he was convicted, leading to an appeal in the High Court in HCCRA No. E127 of 2023, which was dismissed; that he failed to appeal to this Court within the stipulated time as his relatives had promised to hire a counsel to file an appeal on his behalf; that he was later informed that the relatives were unable to do so owing to the high legal fees proposed by the counsel.
3. The State has not filed a response, and neither has any of the parties filed written submissions.
4. I have considered the application and the affidavit in support. The issue for determination is whether the applicant deserves the orders sought. The applicant's application has been brought under rule 44 of the [Court of Appeal Rules](#) 2010, which deals with applications for leave to amend. From reading the entire application and the affidavit, the applicant ostensibly meant to bring the application under rule 4 of this Court's Rules as he seeks to file his appeal out of time.



5. Rule 4 of this Court's Rules empowers the court to exercise discretion to extend the time limited by the Rules for doing any act authorized or required by the Rules.
6. The principles applicable in an application for extension of time under rule 4 of this Court's Rules were stated by Waki, JA in the case of Fakir Mohamed v Joseph Mugambi & 2 Others [2005] eKLR as follows:

“The exercise of this Court's discretion under Rule 4... is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance-are all relevant but not exhaustive factors: See *Mutiso v Mwangi* Civil Appl. NAI. 255 of 1997 (UR), *Mwangi v Kenya Airways Ltd* [2003] KLR 486, *Major Joseph Mwereri Igweta v Murika M'Ethare & Attorney General* Civil Appl. NAI. 8/2000 (UR) and *Murai v Wainaina* (No 4) [1982] KLR 38.”

7. The applicant explained the reason for the delay, which I find plausible, and the delay is not inordinate. On the other hand, the State mounted no opposition. The applicant acts in person and has not annexed the memorandum of appeal. Nonetheless, in the interest of justice, I will allow the application. The memorandum of appeal be filed within the next 14 days of today's date.

**DATED AND DELIVERED AT NYERI THIS 21<sup>ST</sup> DAY OF NOVEMBER, 2024.**

**ALI-ARONI**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

