



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ihumba v Republic (Criminal Application E147 of 2024)  
[2024] KECA 1711 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1711 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E147 OF 2024  
S OLE KANTAI, JA  
NOVEMBER 14, 2024**

**BETWEEN**

**PETER NJUGUNA IHUMBA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for extension of time for Leave to appeal out of time from the Judgment of the High Court at Nyeri (Magare, J.) dated 20th June, 2024 in HC)*

**RULING**

1. Peter Njuguna Ihumba, the applicant, applies by Motion said to be brought under rule 40 of The [Court of Appeal Rules](#), 2010 for an order:

“That, this Court be pleased to grant leave to appeal out of time as a pauper. ...”

and that the Court grant any other order that it may find fit.

2. He says in the supporting affidavit that he was charged with the offence of murder contrary to section 203 as read with section

1. 204 of the [Penal Code](#) at the High Court of Kenya at Nyeri: he entered into a plea bargain where he was convicted and sentenced to serve 20 years in a judgment delivered on 20<sup>th</sup> June, 2024; that in his view, the sentence was manifestly harsh and “traumatizing

2. bearing in mind that I voluntarily entered a plea agreement”; that he wishes to appeal against the sentence only; that:

“...I did not appeal to the Court of Appeal within the stipulated time owing to the fact that my relatives promised to hire an advocate to represent and file an appeal on



my behalf which I am now informed that they were unable owing to the high legal fees asked by counsel. ...”

3. He has attached to the application judgment on sentence in Nyeri High Court Criminal Case E005 of 2022 by Magare, J. read on 20<sup>th</sup> June, 2024 where he was sentenced to 20 years imprisonment effective 2<sup>nd</sup> February, 2022.
4. I have seen hearing notice served on 4<sup>th</sup> November, 2024 at 12.02 p.m. on odppnyeri@odpp.go.ke; nyerimaximumprison@gmail.com where parties were notified of the hearing date and required to file written submissions within limited time. I have not seen submissions by either side.
5. The principles that apply in an application for extension of time were well set out in the 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 of prejudice to the respondent if the application is granted.”

6. The applicant was sentenced to serve prison term on 20<sup>th</sup> June, 2024. His Motion is undated but I note that it was processed by Officer-in-Charge, Nyeri Maximum Prison on 11<sup>th</sup> September, 2024, less than 3 months after the said sentence. He is unrepresented; he is a convict in prison who probably does not have ready or convenient facilities to keep to time-lines set by our rules. On why he was late to mount an appeal he says that his relatives promised to engage a lawyer to handle his intended appeal but he came to learn that they did not do so as lawyers asked for high fees beyond the family’s reach. I accept this as a reasonable explanation for delay and I hold the view that the delay is not unreasonable in those circumstances. The applicant was sentenced to serve 20 years imprisonment for the offence of murder. I do not know about his proposed appeal having chances of success but, again, this is only one of the considerations that I need to consider in an application of this nature.
7. I do not think that the respondent will be prejudiced in any way if I grant the application.

I allow the Motion. Let the applicant file appeal within fourteen (14) days as a pauper.

**DATED AND DELIVERED AT NYERI THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**S. OLE KANTAI**

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

