



REPUBLIC OF KENYA



KENYA LAW
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**Makurathi v Republic (Criminal Application E139 of 2024)
[2024] KECA 1702 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1702 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E139 OF 2024
S OLE KANTAI, JA
NOVEMBER 14, 2024
[IN CHAMBERS]**

BETWEEN

STEPHEN NJAMBUYA MAKURATHI 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 Nanyuki (H. Waweru,
J.) dated 4th May, 2022 in HC Criminal Case No. 38 of 2012)*

RULING

1. The applicant Stephen Njambuya Makurathi applies by Motion that I be pleased “... admit this application for appeal out of time ...” stating that he was charged and convicted for the offence of murder under section 203 as read with section 204 of the *Penal Code*. He was sentenced to serve 40 years by Waweru, J. on 4th May, 2022 at the High Court of Kenya, Nanyuki. He says that he did not appeal on time because he was not furnished with a copy of the judgment on time. He has not given me any other material on which to rely as I consider the application.
2. I note that the respondent was served with a hearing notice on 18th October, 2024 at 4.59 p.m. at nyeri@odpp.go.ke. where parties were required to file written submissions. I have not seen any submissions by either side.
3. The principles that govern an application for leave to extend time were well captured in the case of *Leo Sila Mutiso v. 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."

4. The applicant says that he was tried, convicted and sentenced by the High Court on 4th May, 2022. He was sentenced to serve 40 years imprisonment for murder. He did not appeal on time because he was not given a copy of the judgment of that court. His Motion is undated; it is thumb-printed and processed by the Officer-in- Charge, Nyeri Maximum Prison on 23rd September, 2024, a period of over 2 years after judgment of the High Court.
5. The reason for delay in appealing is given as the applicant not being furnished with a copy of the judgment when the same was delivered. I do not know why the applicant is not represented by counsel considering the nature of the charge. He has drawn the Motion in person and has not stated any grounds of appeal. I however not the circumstances where the applicant has approached the court in person pleading to be allowed to appeal. I know as a fact that in the fullness of time when the intended appeal is ready for hearing the State would be obligated to provide a lawyer for the applicant to act in the intended appeal.
6. I have looked at all the surrounding circumstances and I am prepared to exercise my discretion in the applicant's favour. I cannot see how the respondent would be prejudiced if I allow the Motion.
7. I allow the Motion. Let the applicant file appeal within fifteen (15) days of today.

DATED AND DELIVERED AT NYERI THIS 14TH DAY OF NOVEMBER, 2024.

S. ole KANTAI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

