



**Kabaru v Republic (Criminal Application E122 of 2024)  
[2024] KECA 1619 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1619 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E122 OF 2024  
S OLE KANTAI, JA  
NOVEMBER 7, 2024**

**BETWEEN**

**STEPHEN MWANGI KABARU ..... 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 Muranga (S. C. Chirchir, J.) dated 28th July, 2023 in HC Criminal Appeal No. E041 of 2022.)*

**RULING**

1. The applicant, Stephen Mwangi Kabaru, applies in the Motion said to be brought under rules 31 and 42 of The Court of Appeal Rules and any other applicable provision of law for leave to appeal out of time against the judgment of the High Court of Kenya at Muranga (Chirchir, J.) delivered on 28<sup>th</sup> July, 2023. He says that he was tried and convicted by a trial court for the offence of defilement and was sentenced to life imprisonment, a sentence that was substituted on appeal to a sentence of 50 years imprisonment by the High Court. He says:

"... I was accompanied by an advocate for my appeal, and my relative had promised me to gather some money for an advocate who could appeal in my behalf (sic) but they informed me they could not get required amount.

That, it is for that reason I beg this court to allow me to appeal out of time as the above provision of the law in the interest of justice. ..."

2. That information is repeated in the supporting affidavit.
3. I have not seen a replying affidavit from the respondent.



4. I note that an amended hearing notice dated 24<sup>th</sup> October, 2024 at 2.30 p.m. was served on the respondent at nyeri@odpp.go.ke.
5. I have seen and considered the applicant's written submissions where he makes a plea stating his family's financial situation.
6. The principles that govern applications for leave to extend time are well known and were captured 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 of prejudice to the respondent if the application is granted."
7. Judgment of the High Court intended to be appealed was delivered on 28<sup>th</sup> July, 2023. The Motion before me is undated but was processed by Officer-in-Charge, Nyeri Maximum Prison on 9<sup>th</sup> August, 2024, about 1 year after judgment. The applicant has explained that he wanted to appeal immediately judgment of the High Court was delivered; that he asked his family to engage the services of a lawyer to appeal but that was not done due to financial straits where money required by the lawyer could not be raised. I accept that as a reasonable explanation for delay. I think that the delay is not unreasonable in those circumstances and I do not think that the respondent would be prejudiced in any way if I allow the applicant to appeal.
8. I am satisfied that the applicant is entitled to my exercise of discretion in his favour. I allow the Motion. Let the applicant lodge a notice of appeal within ten (10) days and the appeal within fourteen (14) days thereafter.

**DATED AND DELIVERED AT NYERI THIS 7<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**

