



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kaburu v Republic (Criminal Application E123 of 2024)  
[2024] KECA 1626 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1626 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E123 OF 2024  
S OLE KANTAI, JA  
NOVEMBER 7, 2024**

**BETWEEN**

**NICHOLAS MWEMBIA KABURU ..... 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 Meru (Ong injo, J.) dated 23rd January, 2020 in HC Criminal Appeal No. 51 of 2019)*

**RULING**

1. The applicant Nicholas Mwambia Kaburu has applied by Motion:  
  
“...this Hon. court be pleased to admit this application to do leave (sic) to appeal out of time as pursuant to rules 42 and 43 of the [Court Of Appeal Rules](#) and any other applicable provision of the law.  
  
...”
2. He says in the Motion and supporting affidavit that he was convicted and sentenced to life imprisonment for the offence of defilement contrary to section 8(1) as read with section 8(2) of the [Sexual Offences Act](#); that he appealed to the High Court of Kenya at Meru (Onginjo, J.) but his appeal was dismissed on 23<sup>rd</sup> January, 2020; that he did not receive a copy of the judgment to enable him appeal on time; that his intended appeal has high chances of success; that he begs to be allowed to appeal out of time in the interest of justice.
3. I have not seen a replying affidavit or written submissions by the respondent who I note was served with an amended hearing notice on 24<sup>th</sup> October, 2024 at 2.43 p.m. at Dpp



Merucountydppmerucounty@yahoo.com where parties were notified of the hearing date and required to file written submissions.

4. I have seen and considered the applicant's written submissions where he repeats what he has said in the application adding that the Court has discretion to enlarge time where an applicant or his lawyer did not obtain a copy of the judgment to be appealed on time. He submits that he was not represented in the trial court and High Court, that he tried to obtain a copy of the judgment in vain, that:

"I now humbly beg this Court to have mercy on me since the imposed sentence of life imprisonment still stand and I do not have any other avenue to seek justice."

5. The principles that apply in an application like this one for leave to extend time were well stated 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."

6. The applicant has not given me much material in this application. He has attached to the application the judgment of High Court at Meru which was delivered on 23<sup>rd</sup> January, 2020. He says that he was not furnished with a copy of the same, that his attempts to obtain a copy of the judgment were in vain. I do not know when he got a copy. The Motion itself is undated but I note that it was processed by the Officer in Charge, Nyeri Maximum Prison, on 25<sup>th</sup> July, 2024, a period of more than 4 years after the said judgment had been delivered. This is a long period of time. But the applicant says that he was unrepresented at the High Court; it is possible that he had been in custody even at the trial court. The applicant is a convict detained at Nyeri Maximum Prison where he probably lacks facilities to pursue his intention to appeal; he had no counsel to advise him or assist him to comply with timelines for appealing. He says that his intended appeal has high chances of success but he has not told me what those chances are. I note that the applicant is serving a life sentence and he strongly believes that the justice sector can still afford him a remedy if he is allowed to appeal.
7. The respondent has not opposed the application and I cannot see how it can suffer any prejudice if the application is allowed.
8. I am prepared in all the circumstances I have enumerated to exercise my discretion in favour of the applicant. I allow the Motion by extending time to appeal. Let the applicant file appeal within fourteen (14) days of today.

**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**

