



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mburu v Republic (Criminal Application E125 of 2024)  
[2024] KECA 1618 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1618 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E125 OF 2024  
S OLE KANTAI, JA  
NOVEMBER 7, 2024**

**BETWEEN**

**CHARLES KAMAU MBURU ..... 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 (Wakiaga, J.)  
dated 29th November, 2021 in HC Criminal Appeal No. 50 of 2016)*

**RULING**

1. The applicant, Charles Kamau Mburu, applies through the Motion said to be brought under section 349 *Criminal Procedure Code* and rule 64 of *The Court of Appeal Rules*, 2010:
  1. That, this court be pleased to grant leave to appeal out of time as a pauper.
  2. That, any other order the court may deem fit.
  3. ...”
2. He says that the application is grounded on “... such other grounds to be adduced ...” and by his supporting affidavit where he depones amongst other things that he was charged and convicted of a sexual offence at Kigumo Law Courts where he was sentenced to life in prison on 2<sup>nd</sup> February, 2016; he appealed to the High Court at Muranga but his appeal was dismissed by Wakiaga, J. on 21<sup>st</sup> November, 2021; that he did not file a second appeal to this Court because his relatives promised to engage a lawyer for him:

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



...”

3. He therefore prays to be allowed to file an appeal out of time as a pauper. He says that he has annexed a memorandum of appeal but I have not seen it. I have seen judgment of the High Court where appeal on both conviction and sentence was dismissed.
4. I have seen Amended Hearing Notice where Office of Director of Public Prosecutions was served at [nyeri@odpp.go.ke](mailto:nyeri@odpp.go.ke) on 24<sup>th</sup> October, 2024 at 2.35 p.m. where parties were directed to file written submissions. I have seen written submissions by the applicant but none from the respondent. The applicant, in the written submissions merely repeats what he has stated in the application adding that I have discretion to extend time. He cites case law – Civil Appeal No. E119 of 2021 *LAC & Another v MJC* [2022] KECA 68 KLR to support the proposition that an applicant to be entitled to exercise of discretion needs to give a reasonable explanation for delay.
5. I have considered the application. The principles that apply in an application for leave to extend time are well settled and were set out 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.”

6. I note that judgment of the High Court was delivered on 29<sup>th</sup> November, 2021. The applicant’s motion is undated and it was processed by the Officer-in-Charge, Nyeri Maximum Security Prison on 17<sup>th</sup> August, 2024, a period of over 2½ years after the said judgment. The applicant says as explanation for delay that he was informed by his family that they were to engage a lawyer to assist him in an appeal process but that this did not happen as his family was unable to raise high fees that were required by the lawyer. I note that the applicant is serving a life sentence and this may have encumbered him in pursuing his right of appeal. I accept this as a reasonable explanation for delay. I have no material on which I can decide whether the intended appeal has chances of success but again that is only one of the possible factors that I need to consider.
7. I do not think that the respondent will be prejudiced if I exercise my discretion in favour of the applicant. I allow the Motion.
8. Let the applicant file his appeal as a pauper 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**

