



**Mwaniki v Republic (Criminal Application E157 of 2024)  
[2024] KECA 1896 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1896 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E157 OF 2024  
AO MUCHELULE, JA  
DECEMBER 20, 2024**

**BETWEEN**

**JOSEPH MAINA MWANIKI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application seeking leave to appeal out of time against the judgment of the High Court of Kenya at Nyeri (C. Kendagor, J.) dated 2nd August 2024 in HCRA No. E023 OF 2021)*

**RULING**

1. The applicant, Joseph Maina Mwaniki, was convicted by the Principal Magistrate’s Court at Karatina of robbery with violence under section 296(2) of the Penal Code, and sentenced to suffer death. His appeal against conviction and sentence was on 2<sup>nd</sup> August 2024 set aside and substituted by forty (40) years imprisonment by the learned C. Kendagor, J. of the High Court at Nyeri. Under Rule 61(1) of the Court of Appeal Rules, 2022 he was requested to file a notice of appeal within 14 days of the dismissal, if he felt aggrieved by the decision and wanted to come before this Court to appeal. He did not.
2. Before me is an undated notice of motion under Rule 40 of this Court’s Rules 2010 wherein the applicant seeks that leave be granted to appeal out of time since he could not appeal within the requisite time. He gives the reason for not appealing within time to be that he was promised by his relatives that they would hire an advocate for him but that they had failed to get money to hire one. In the process this delay had been occasioned.
3. Rule 4 of the Court of Appeal Rules, 2022 allows for the extension of time to file a notice of appeal. There was three (3) months of delay. I appreciate that there is no minimum or maximum period of delay, as each case depends on its peculiar circumstances. What is important is that the delay should not be inordinate; should be explained in reasonable and plausible terms; the respondent should not be unduly inconvenienced; and the intended appeal should have possible chances of success.



4. From the grounds, as argued in the written submissions by the applicant, the intended appeal is arguable as he contends that the ingredients of robbery with violence were not proved by the prosecution. The explanation for the delay appears reasonable, given that the applicant is in jail and for life. Communicating with relatives for purposes of appeal may not be easy.
5. On the whole, I allow the application and extend time. The applicant shall file and serve a notice of appeal within 7 days, and the record of appeal within 45 days from today.

**DATED AND DELIVERED AT NYERI THIS 20<sup>TH</sup> DAY OF DECEMBER 2024.**

**A.O. MUCHELULE**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

