



**Republic v Muiga & another (Criminal Application E127 of 2024)  
[2024] KECA 1868 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1868 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E127 OF 2024**

**JW LESSIT, JA**

**DECEMBER 19, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DAVID CHEGE MUIGA ..... 1<sup>ST</sup> RESPONDENT**

**STANLEY NJOROGE MWANGI ..... 2<sup>ND</sup> RESPONDENT**

*(Being an application for leave to file an appeal out of time against the Judgment of Magare Kizito, J. of 27th June, 2024 releasing the 1st respondent and leave to file an appeal against a review order in a revision releasing the 2nd respondent in Criminal Appeal No. E065 of 2023)*

**RULING**

1. This application is by the State. By a Notice of Appeal dated 8<sup>th</sup> August 2024, Mr. Solomon Naulikha, gave the following notice
 

“Take notice that the Republic/ Appellant herein, the Republic, being dissatisfied with the judgement of H o n o r a b l e Justice Magare D. Kizito delivered on 14<sup>th</sup> September, 2023 intends to appeal to the Court of Appeal against the whole of the said decision.”
2. It has been brought under rule 1(2) and 5(2) (a) and 61 of the Court of Appeal Rules. By a notice of motion dated 8<sup>th</sup> August, 2024, the applicant seeks:
  1. That this Honourable Court be pleased to grant the Respondent leave to Appeal out of time to the Court of Appeal against the judgment delivered by Hon. Justice Magare D. Kizito on the 12<sup>th</sup> July, 2024 and review orders dated 27<sup>th</sup> June, 2024.



3. The applicant has a duty to explain the reasons for the delay to the satisfaction of the Court. The State has explained that the delay was not deliberate but occasioned by circumstances beyond the control of the Appellant. The circumstances have not been disclosed.
4. The notice of appeal as filed was in respect of the judgement of Magare Kizito, J. delivered on 14<sup>th</sup> September, 2023. The affidavit sworn by Mr. Solomon Naulikha in support thereof avers that the judgment intended to be appealed was dated and delivered on the 12<sup>th</sup> July, 2024. The copy of judgment annexed and marked S.N. 1(a) was delivered on the 27<sup>th</sup> June, 2024. I note that the judgment cited in the notice of appeal, the one quoted in the notice of motion and the one attached to the affidavit in support of the application are all totally different.
5. I note that the notice of motion herein seeks leave to file appeal out of time in respect of two different decisions; a judgment and a review. The particulars of the judgment have been given, the name of the judge and the date(s) it was delivered albeit three different dates were provided in the three different documents touching on it.
6. Rule 61 of the Rules of this Court specifies what an intended appellant is required to file and provides thus:
  1. A person who desires to appeal to the Court shall give notice in writing, which shall be lodged in six copies with the registrar of the superior Court at the place where the decision against which it is desired to appeal was given, within fourteen days after the date of that decision, and the notice of appeal shall institute the appeal.
  2. Each notice of appeal shall—
    - (a) briefly state the nature of the acquittal, conviction, sentence or finding against which it is desired to appeal; and...
7. There is a notice of appeal in writing filed by the DPP. The notice of appeal itself conforms to the requirement of this rule. However, the notice of motion filed in its respect introduces omnibus prayers for leave to file appeal against a judgment and a review. There should be a nexus between the notice of appeal, the motion filed in its respect and the impugned judgment that should also be annexed in support of the motion. As there was no nexus between the three documents filed, the entire application is defective in form and substance.
8. Turning to the leave sought to file an appeal on a review: an order of the Court by Kizito Magare, J. is attached. It was made in Criminal Revision No. 204 of 2024. It is dated 12<sup>th</sup> July 2024 by Kizito Magare, J. That is not the same file in which the judgment sought to be appealed was made. It should have been treated as a different case and a notice of appeal filed in its respect.
9. For the reasons I have set out above, this application is incurably defective and I accordingly strike it down.

**DATED AND DELIVERED AT NYERI THIS 19<sup>TH</sup> DAY OF DECEMBER, 2024.**

**J. LESIIT**

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**JUDGE OF APPEAL**

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

Signed



**DEPUTY REGISTRAR**

