



**Wachira v Republic (Criminal Application E142 of 2024)  
[2024] KECA 1865 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1865 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E142 OF 2024  
JW LESSIT, JA  
DECEMBER 5, 2024**

**BETWEEN**

**RICHARD GITHANGA WACHIRA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against sentence only of the Judgment made in the High Court of Kenya at Nyeri (Mshila, J.) dated and delivered on 11th February, 2021 in HCCR. C No. 33 of 2012)*

**RULING**

1. The applicant, Richard Githanga Wachira, filed this application under rule 40 of the Court of Appeal Rules. By an undated notice of motion filed on 14<sup>th</sup> August, 2024, the applicant seeks, to appeal only against the sentence and has prayed that this Court be pleased to grant leave to appeal out of time and as a pauper.
2. The applicant did not state the offence for which he was tried or the nature of sentence imposed against him. I have looked at the high court record and note that the applicant was sentenced to 35 years imprisonment for the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). The judgment is dated 3<sup>rd</sup> December, 2020. The ruling with the sentence is dated 11<sup>th</sup> February, 2021.
3. In his supporting affidavit, the applicant averred that he did not appeal to the Court of Appeal within the prescribed time because his family was unable to raise money to instruct an advocate and that it was only recently that he was informed they could not make to hire one.
4. The applicant has a duty to explain the reasons for the delay to the satisfaction of the Court that would enable the Court exercise its unfettered power in his favour. The Supreme Court of Kenya pronounced



itself in the question of extension of time in the case of *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, and stated as follows:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

5. The applicant has explained that the cause of the delay was lack of finances. That his family had promised to get him an advocate but that recently they informed him that they were unable to raise the fees for the advocate.
6. I note that the ruling of the High Court intended to be appealed was delivered on the 11<sup>th</sup> February, 2021. The period for the delay is three years and six months. That is inordinately long period of time. His explanation that he lacked funds to file his appeal is not plausible nor reasonable.
7. I find that the application is not merited and the same is dismissed accordingly.

**DATED AND DELIVERED AT NYERI THIS 5<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**

