



REPUBLIC OF KENYA



**Kennga v Republic (Criminal Application NAK. E057 of 2024)  
[2024] KECA 1768 (KLR) (4 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1768 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION NAK. E057 OF 2024**

**MA WARSAME, JA**

**DECEMBER 4, 2024**

**[IN CHAMBERS]**

**BETWEEN**

**JULIUS MUTHOI KENNGA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for extension of time to file a notice of appeal,  
against the ruling of the High Court at Naivasha (Nzioka, J.) dated  
19th December, 2022 in HCCR Application No. E034 of 2020)*

**RULING**

1. The applicant was charged and convicted of the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. He was sentenced to death, but following the Supreme Court decision in *Francis Karioko Muruatetu & Another v. Republic* [2017] eKLR he filed an application for resentencing. In a ruling dated 19<sup>th</sup> December 2022, Nzioka, J. sentenced the applicant to 40 years to be reduced by 6 years already served.
2. Aggrieved, the applicant now wishes to appeal that decision and seeks leave to appeal out of time vide a notice of motion dated 31<sup>st</sup> May 2024 where he contends that the learned judge failed to consider the mitigating circumstances in the case and that he had reformed.
3. The respondent through written submissions contended that it did not oppose the application given that the sentence meted out was lengthy and this was his first appeal.



4. This court has settled on the matters which should be taken into consideration when the court was called upon to exercise its discretion. Those matters, as was stated in the case of *Leo Sila Mutiso v Helen Wangari*, (NRB) Civil Application No. 251 of 1997, include:

“... 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.”

5. I have perused the application and the affidavit in support of the application and not a single reason has been given for the delay of about 1 year and 5 months.

6. Consequently, no tangible reason has been offered for the delay which is inordinate. This court cannot act on its own whims in granting the orders sought and I therefore decline to exercise my discretion and dismiss the application with no order as to costs.

**DATED AND DELIVERED AT NAKURU THIS 4<sup>TH</sup> DAY OF DECEMBER, 2024.**

**M. WARSAME**

**JUDGE OF APPEAL**

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

signed

**DEPUTY REGISTRAR**

