



REPUBLIC OF KENYA



KENYA LAW
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**Njuguna v Republic (Criminal Application E033 of 2022)
[2023] KECA 423 (KLR) (14 April 2023) (Ruling)**

Neutral citation: [2023] KECA 423 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CRIMINAL APPLICATION E033 OF 2022**

S OLE KANTAI, JA

APRIL 14, 2023

BETWEEN

PETER KARIUKI NJUGUNA APPLICANT

AND

REPUBLIC RESPONDENT

(An application for extension of time to file a notice of appeal out of time in an intended appeal from the Judgment of the High Court of Kenya at Kiambu (Joel Ngugi, J.) dated 3rd February, 2017 in HC. CR.A. No. 149 of 2016)

RULING

- 1 The applicant Peter Kariuki Njuguna was convicted of the offence of defilement and sentenced to life imprisonment. His appeal to the High Court of Kenya at Kiambu was dismissed on both conviction and sentence in a judgment delivered by Joel Ngugi, J (as he then was) in a Judgment delivered on February 3, 2017. In the Motion before me said to be brought under Section 200(3)(4) of the Criminal Procedure Code and all other enabling provisions of law, (I pose here to say that these are the wrong provisions of law which is surprising because the Motion is drawn by a law firm). I am asked in the main to grant leave to the applicant to file an appeal out of time on humanitarian grounds.
- 2 In grounds in support of the motion and in an affidavit of Wanjiku Charity Gitire an Advocate of the High Court of Kenya I am told amongst other things that the applicant did not have the privilege of being represented by an advocate both at the trial court and at the High Court; that the applicant is currently serving his sentence at Manyani Prison in Voi; that the said lawyer Wanjiku Charity Gitire has been retained to represent the applicant to file an appeal; that no prejudice will be suffered by the Office of the Director of Public Prosecutions; and that the intended appeal has merits with probability of success and, finally, that justice and fairness demands that the applicant be allowed to appeal out of time.



3 The parties were served with a hearing notice for the Motion through the hearing notice by the Registrar of March 7, 2023 at 2.25 p.m. I have seen a letter dated March 13, 2023 by the Office of Director of Public Prosecutions under the hand of John M Muriithi, Assistant Director Public Prosecutions Court of Appeal Division. The letter states in essence that that office is not opposed to this application.

The principles that apply in application of this nature are set in the case of *Karny Zabarya and Another vs. Shalom Levi* Civil Application No. 80 of 2018 as follows:

“Some of the considerations to be borne in mind while dealing with an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal; the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity. In taking into account the last consideration, it must be born in mind that it is not the role of a single Judge to determine definitively the merits of the intended appeal. That is for the full Court if and when it is ultimately presented with the appeal.”

See also the case of *Leo Sila Mutiso v Rose Wangari Mwangi* C A No Nai 255 of 1997.

3 I am told in the motion and affidavit that the applicant was not represented by counsel at the trial court and of the High Court on first appeal. I note that he was sentenced to imprisonment for life. I am urged to allow him to try his hand in a possibly last appeal. I consider also the fact that the respondent (office of Director Public Prosecutions) is not opposed to the application. I allow the motion. Let an appeal be filed within 14 days from today.

Dated and delivered at Nairobi this 14th day of April, 2023.

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

