



REPUBLIC OF KENYA



KENYA LAW
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**Adul v Republic (Criminal Application E298 of 2022)
[2023] KECA 1080 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KECA 1080 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E298 OF 2022
M NGUGI, JA
SEPTEMBER 22, 2023**

BETWEEN

WILSON AJWANG ADUL APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application seeking waiver of fees and extension of time to file appeal out of time from the Judgment of the High Court of Kenya at Siaya, (Makau, J.) dated 6th October, 2017 in HCCRC No. 08 of 2016)

RULING

1. In his application dated December 8, 2022 brought under Rule 113(2) of the *Court of Appeal Rules* (Rule 118(2) of the 2022 Rules), the applicant seeks leave for waiver of fees and for extensions of time to file his appeal out of time. He bases his application on the grounds that he is in person, has been abandoned by his family and he is therefore not able to pay the fees required to file the appeal to this Court.
2. The applicant avers that he was convicted of the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* in Siaya HCCR No. 08 of 2016, (Makau, J) in a judgment dated October 17, 2017. I observe that the record indicates that the judgment was delivered on October 6, 2017, though both the applicant and the respondent refer to October 17, 2017 as the date of the judgment.
3. The respondent, represented by Senior Principal Prosecution Counsel Patrick Okang'o, does not oppose the application for extension of time. Mr. Okang'o notes in his submissions that while a delay of 5 years – from the date of the judgment on October 17, 2017 to the date the present application was filed – December 8, 2022 would ordinarily be considered inordinate, the fact that the applicant was sentenced to death and that the Supreme Court thereafter in *Francis Karioko*



Muruatetu v Republic [2017] eKLR held the mandatory nature of the death sentence unconstitutional, the respondent concedes the application for extension of time.

4. Having considered the application and the submissions in response, and noting the concession by the State, I am satisfied that the application is merited. I therefore grant the applicant leave to file his appeal out of time. The notice of appeal dated December 8, 2022 is deemed as duly filed.
5. Regarding the prayer for waiver of fees, I believe that this is an unnecessary prayer as there is no requirement for criminal appellants to pay fees with respect to records of appeal, which are prepared by the Court Registry, which I hereby direct the Deputy registrar to facilitate the preparation of and service on the appellant and the respondent.

DATED AND DELIVERED AT KISUMU THIS 22ND DAY OF SEPTEMBER, 2023

MUMBI NGUGI

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JUDGE OF APPEAL

I certify that this is

a true copy of the original

DEPUTY REGISTRAR

