

**IN THE COURT OF
APPEAL AT
NAKURU**

**(CORAM: GACHOKA, J.A - IN
CHAMBERS) CRIMINAL APPLICATION NO.
E081 OF 2025**

BETWEEN

PHILIP ESINYEN EKAI.....APPLICANT

AND

REPUBLIC

.....

RESPONDENT

(An application for leave to appeal out of time against the conviction and sentence by the High Court of Kenya at Naivasha (C. Meoli, J.) delivered on 3rd May 2018

in

HCCRA No. 39 of 2015)

RULING

1. In his application dated 8th July 2025, the applicant seeks leave of this Court to appeal out of time from the conviction and sentence upheld by the Naivasha High Court in *HCCRA No. 39 of 2015(C.Meoli J)*. The applicant was charged in Naivasha CMC Criminal Case No. 15 of 2015 with the offence of robbery with violence contrary to section 296 (2) of the Penal Code. The trial court convicted him of the offence and

sentenced him to death. The appellant appealed against those findings before the Naivasha High Court. In her judgment dated 3rd May 2018, *Meoli*,

J. found that the appellant's conviction and sentence merited and were resultantly upheld and affirmed. In the circumstances, his appeal was dismissed.

2. The applicant is aggrieved with those findings. In support of his application, the applicant has attached his supporting affidavit sworn on 8th July 2015. He urged this Court to allow his application for the reason that he was not supplied with a copy of the judgment in good time.
3. The application was heard by way of written submissions. The applicant filed his written submissions dated 4th November 2025. He urged this Court to consider the grounds supporting his application to invoke Articles 22, 50 (2) (q) and 159 (2) (d) of the Constitution as well as rule 4 of the Court of Appeal Rules.
4. In the respondent's written submissions dated 10th November 2025, Senior Assistant Director of Public Prosecutions Mr. Omutelema, acting for the state, did not oppose the application. He urged this Court to take into account the fact that the sentence meted out against the applicant is heavy.

5. The discretion set out in rule 4 of the Court of Appeal Rules 2022 is wide and discretionary. It is for this reason that in exercise of the same, a fact finder should not be guided by whims, caprice or sympathy. The guiding principles are not exhaustive. However, the Court is urged to take into account the length of delay involved, the reasons for delay, possible prejudice on any party, the conduct of the parties, the need to balance competing interests, the need to protect a party's opportunity to fully litigate his or her dispute, and the chances of succeeding. [See **Karny Zahrya & another vs. Shalom Levi** [2018] eKLR].
6. I have considered the reason advanced by the applicant, the respondent's submissions and the law. The applicant took seven years to lodge the present application. Though he stated that he was not supplied with the judgment in good time, it was also incumbent on him to demonstrate the steps he took to secure the judgment or the circumstances impeding his action to obtain the judgment. It has been seven years since he was sentenced. That is inordinate delay. I am therefore not persuaded that the applicant is deserving of

the orders sought. Accordingly, the

application dated 8th July 2025 lacks merit. It is
hereby dismissed.

**Dated and delivered at Nakuru this 18th day of November
2025.**

M. GACHOKA C.Arb, FCIArb.

.....

“
JUDGE OF APPEAL

*I certify that this is a
True copy of the original
Signed*

DEPUTY REGISTRAR

