

**IN THE COURT OF  
APPEAL AT  
NAKURU**

**(CORAM: GACHOKA, J.A - IN CHAMBERS)  
CRIMINAL APPLICATION NO. E068 OF  
2025**

**BETWEEN**

**MARY WANJIKU GATUNGU.....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 Nyandarua (W. Kiarie, J.) delivered on 24<sup>th</sup> June 2025*

*in*

**HCCRC No. E021 of  
2025)**

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**RULING**

1. In her Notice of Motion dated 3<sup>rd</sup> July 2025, the applicant seeks leave of this Court to appeal out of time as a pauper from the conviction and sentence of the High Court at Naivasha in *HCCRC No. E021 of 2025* delivered on 24<sup>th</sup> June 2025. The applicant was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal

Code. She was found guilty and sentenced to death.

2. It is those findings that have precipitated the filing of the present application. It is supported by the grounds on the face of it,

together with the annexed memorandum of appeal and grounds of appeal. The applicant seeks leave to appeal out of time but did not furnish reasons for delay. However, she raised grounds of law and fact supporting her appeal bid.

3. In the written submissions dated 3<sup>rd</sup> November 2025, Senior Assistant Director of Public Prosecutions Mr. Omutelema acting for the respondent, pointed out that the applicant lodged the application only ten days after the impugned decision was delivered. Since it was her first appeal, and taking into account the period of delay, Mr. Omutelema did not oppose the application.
4. The discretionary powers to extend time is provided in rule 4 of the Court of Appeal Rules 2022. This Court **Mungatu vs. Republic** [2023] KECA 671 (KLR) citing with approval the decision in **Muringa Company Limited vs. Archdiocese of Nairobi Registered Trustees** [2020] eKLR laid out the following considerations that this Court ought to take into account:

***“Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the***

***delay involved, the reason or reasons for the delay, the possible prejudice, if***

**any, that each party stands to suffer, 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 considering the last principle, it must be borne in mind that it is not the role of the 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."**

5. I have considered the application, the annexed documents, the respondent's concession to the application and the law. It is instructive to note that no reasons were furnished for the delay in filing the application. However, it is categorically stated that the applicant is a poor woman and cannot afford the services of a lawyer. In a case like this, the applicant is entitled to a lawyer on *pro bono* basis. However, that is an issue reserved for the hearing of the appeal.
6. The applicant has made this application without delay and this demonstrates the eagerness to have her day in court. Indeed, the applicant lodged the application timeously in ten

days after

the judgement was delivered and I have no reason to shut the appeal door. I am persuaded to hold that the application has met the threshold for the exercise of discretion by this Court.

7. Accordingly, the applicant ought to benefit from the exercise of this Court's discretion in the following terms: the applicant shall file his notice of appeal within 14 days from the date of this order. Thereafter, the record of appeal shall be filed and served within 30 days from the date hereof.

**Dated and delivered at Nakuru this 12<sup>th</sup> 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**