

**IN THE COURT OF APPEAL  
AT NAKURU  
(CORAM: GACHOKA, J.A - IN CHAMBERS)  
CRIMINAL APPLICATION NO. E072 OF  
2025**

**BETWEEN**  
**GIDEON KIPKOECH KORIR.....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 Narok (Bwonwonga, J.) delivered on 15<sup>th</sup>  
November 2017 in*

**HCCRA No. 32 of  
2016)**

\*\*\*\*\*

**RULING**

1. By Notice of Motion dated 31<sup>st</sup> July 2025, the applicant seeks leave of this Court to appeal out of time against the conviction and sentence upheld by the Narok High Court in *HCCRA No. 32 of 2017*. The applicant was charged in Narok CMC Criminal Case no. 873 of 2015 with the offence of robbery with violence contrary to section 296 (2) of the Penal Code. After full trial, the applicant was convicted and sentenced to death. His first appeal before the Narok High Court was dismissed on conviction but the sentence was commuted to life imprisonment on 15<sup>th</sup> November 2017.

2. The applicant is aggrieved with those findings. His application is supported by the grounds on the body of the application and his supporting affidavit sworn on 31<sup>st</sup> July 2025. He urged this Court to allow the application as he was not furnished with the judgment in good time to enable him appeal in good time.
3. The respondent filed its written submissions dated 3<sup>rd</sup> November 2025. Senior Assistant Director of Public Prosecutions Mr. Omutelema did not oppose the application for the following reason: though the delay of eight years was inordinate, with an unreasonable and unsatisfactory explanation for it, the sentence of death was heavy.
4. The present application is hinged upon rule 4 of this Court's Rules. The Supreme Court of Kenya in the case of **Twaha vs. Abdalla & 2 others** [2015] KESC 20 (KLR) held as follows

regarding the exercise of discretion to extend time:

***“As regards extension of time, this Court has already laid down certain guiding principles. In the Nick Salat case, it was thus held:***

***“... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can***

**enable the Court to exercise its discretion in favour of the applicant.**

**... we derive the following as the underlying principles that a Court should consider in exercising such discretion:**

**extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party, at the discretion of the Court; a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court; whether the Court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis; where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court; whether there will be any prejudice suffered by the respondents, if extension is granted; whether the application has been brought without undue delay; and whether in certain cases, like election petitions, public interest should be a consideration for extending time."**

5. I have considered the reason advanced by the applicant, the respondent's submissions, and the law. I have also taken note that contrary to the applicant's submission, the High Court upheld the sentence given by the trial court. The applicant explained the delay of eight years by stating that he was not furnished with the judgment in good time.
6. However, this Court cannot turn a blind eye on the fact that it has been a whopping eight years since the disputed judgment was delivered. In my view, the applicant ought to have

advanced an explanation and extenuating circumstances to demonstrate the steps he took to alert the prison officers to obtain the judgment. The only reason in the supporting affidavit dated 31<sup>st</sup> July 2025 is as follows: ***“I was not able to file the appeal on time as I had not received a copy of the judgement.”***

7. A considerable period has elapsed, and there is insufficient evidence to indicate that the applicant intended to pursue an appeal. While the Court is cognizant of the fact that the applicant is currently incarcerated, it remains his responsibility to provide an explanation for the eight-year delay in filing this application. Was he sick? Did he engage the prison authorities to help him get the proceedings and judgement and was not assisted? What changed now to enable him to file the application? While I am fully conscious that the applicant is in prison, the exercise of discretion must be based on a cogent explanation and it is not an exercise to be handled casually.
8. In view of the foregoing reasons, I am not satisfied that the applicant is deserving of the exercise of this Court's discretion.

Accordingly, the Notice of Motion dated 31<sup>st</sup> July 2025 lacks merit. It is hereby dismissed.

**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**

