



REPUBLIC OF KENYA



KENYA LAW
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**Muchanga v Republic (Criminal Application E079 of 2025)
[2025] KECA 1917 (KLR) (17 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1917 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E079 OF 2025
PM GACHOKA, JA
NOVEMBER 17, 2025
CORAM: GACHOKA, J.A – IN CHAMBERS)
CRIMINAL APPLICATION NO. E079 OF
2025**

BETWEEN

KEZIAH WAMBUI MUCHANGA 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 (G.L. Nzioka, J.) delivered on 20th January 2025 and 26th March 2025 respectively in HCCRC No. 1 of 2020)

RULING

1. By Notice of Motion dated 15th August 2025, the applicant seeks leave of this Court to appeal out of time against the conviction and sentence of the Naivasha High Court in HCCRC No. 1 of 2020. The applicant was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The trial court convicted her of the offence of manslaughter after a full trial on 20th January 2025. She was sentenced to serve 8 years imprisonment on 26th March 2025.
2. The applicant is aggrieved with the findings. Her application is supported by her affidavit sworn on 15th August 2025. It is based on the following grounds: the delay in filing the appeal was not deliberate as she had not been furnished with the proceedings and judgment in good time to enable her file an appeal; she was always interested in filing an appeal; she had cogent grounds of appeal particularly on the sentence by dint of section 333 (2) of the Criminal Procedure Code; if the application is not allowed, her constitutional rights guaranteed in Article 50 (2) (q) would be rendered illusory.



- 3. The state filed its written submissions dated 10th November 2025. Senior Assistant Director of Public Prosecutions Mr. Omutelema urged this Court to allow the application since the delay in filling the present application was ordinate.
- 4. The present application is hinged on the provisions of rule 4 of this Court’s rules which grants this Court powers to extend time for inter alia, appealing out of time. In *Fakir Mohammed v Joseph Mugambi and two others* [2005] eKLR, the Court set out this Court’s jurisdiction in determination of applications made under Rule 4. The discretion is unfettered. In its decision, the Court observed:

“The exercise of this Court’s discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance – are all relevant but not exhaustive factors.”
- 5. I have considered the reason advanced by the applicant, the respondent’s submissions and the law. The applicant lodged this application 5 months after her sentence was passed. I find that the delay is not inordinate. She has also sufficiently explained the delay in filing the present application. She therefore qualifies to benefit from the exercise of this Court’s discretion. Accordingly, the applicant shall file her notice of appeal within 14 days from the date of this order. Thereafter, the record of appeal shall be prepared, filed and served within 30 days.

DATED AND DELIVERED AT NAKURU THIS 17TH DAY OF NOVEMBER 2025.

M. GACHOKA C.Arb, FCI Arb.

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

Deputy Registrar

