

**IN THE COURT OF
APPEAL AT
NAKURU**

**(CORAM: GACHOKA, J.A - IN CHAMBERS)
CRIMINAL APPLICATION NO. E083 OF
2025**

BETWEEN

**JAMES BIRIR RONO alias ASKARI BONOKO. .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 Eldama Ravine (R.B. Ng'etich, J.)
delivered on 31st July 2025*

in

HCCRC No. E009 of 2024)

RULING

1. The applicant has invoked the provisions of rule 4 of the Court of Appeal Rules 2022 in his Notice of Motion dated 22nd August 2025. He seeks leave to appeal out of time against his conviction and sentence upheld by the Eldama Ravine High Court in HCCRA No. E009 of 2024(R.B.Ngetich J). The applicant was charged with the offence of robbery with violence contrary to section 296 (2) of the Penal Code.

He also faced a second count of defilement contrary to section 8 (1) as read

with section 8 (4) of the Sexual Offences Act. The trial court convicted the appellant on both counts. He was sentenced to serve 30 years imprisonment and 15 years imprisonment respectively. Aggrieved, the applicant lodged an appeal before the High Court of Kenya at Eldama Ravine. In her judgment dated 31st July 2025, *Ng'etich, J.* dismissed the applicant's appeal in its entirety.

2. The applicant is dissatisfied with those findings hence the application. It is supported by his supporting affidavit sworn on 22nd August 2025. He seeks leave to appeal out of time for the reason that he was never furnished with the judgment in good time to enable him pursue an appeal.
3. In its written submissions dated 10th November 2025, the state, through Senior Assistant Director of Public Prosecutions Mr. Omutelema, submitted that it did not oppose the application as the sentence meted out is lengthy. He further computed that the applicant lodged this application two months after the impugned decision was delivered. The delay was therefore not inordinate.

4. Under rule 4 of this Court's Rules 2022, discretion is given to extend time for the doing of any act provided for under the Rules. **In Henry Mukora Mwangi vs. Charles Gichina Mwangi** Civil Application No. Nai. 26 of 2004, this Court held:

"It has been stated time and again that in an application under rule 4 of the Rules the learned single Judge is called upon to exercise his discretion which discretion is unfettered. It may be appropriate to re-emphasize this principle by referring to the decision in Mwangi v Kenya Airways Ltd. [2003] KLR 486 in which this Court stated:

"Over the years, the Court has, of course set out guidelines on what a single Judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance, in Leo Sila Mutiso -vs- Rose Hellen Wangari Mwangi - Civil Application No. Nai. 255 of 1997 (unreported), the Court expressed itself thus:

"It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: firstly, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of

prejudice to the respondent if the application is granted.”

5. I have considered the reason advanced by the applicant as set out in the application, the supporting affidavit, the respondent's submissions and the law applicable. I am satisfied to hold that the application has met the threshold for the exercise of discretion by this Court. I also note that the applicant moved with speed by filing the application less than one month after the judgment he intends to appeal against was delivered. He therefore filed the application timeously. In view of the foregoing, the applicant deserves the benefit of the exercise of this court's discretion and I make the following orders: 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.

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

M. GACHOKA C.Arb, FCI Arb.

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR