



REPUBLIC OF KENYA



KENYA LAW
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**Too v Republic (Criminal Application E052 of 2025)
[2025] KECA 1851 (KLR) (10 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1851 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E052 OF 2025
PM GACHOKA, JA
NOVEMBER 10, 2025**

BETWEEN

BERNARD KIPLANGAT TOO APPLICANT

AND

REPUBLIC RESPONDENT

*(An application for leave to appeal out of time against the conviction
and sentence of the High Court of Kenya at Kericho (Ongeri, J.)
delivered on 10th February 2023 in HCCRA No. 21 of 2019)*

RULING

1. Before me is the Notice of Motion dated 28th April 2025. The applicant seeks leave of this Court to appeal out of time against the judgment of Kericho High Court in HCCRA No. 21 of 2019. The applicant was in Kericho CM Criminal Case No. 420 of 2018 charged with the offence of robbery with violence contrary to section 296 (2) of the Penal Code. He was convicted and sentenced to 30 years imprisonment. On appeal, Ongeri, J. on 10th February 2023 dismissed it in its entirety.
2. The applicant is intent on appealing against that decision. His Notice of Motion is supported by his affidavit sworn on 28th April 2025. His justification is that his attempts to appeal several times has elicited no favourable response.
3. The applicant filed written submissions dated 30th October 2025. He urged this Court to allow his application in light of Articles 50 (2) (q) and 159 (2) (d) of *the Constitution* and rule 4 of the Court of Appeal Rules 2022.
4. The respondent filed written submissions dated 3rd November 2025 through Senior Assistant Director of Public Prosecutions Mr. Omutelema. Counsel submitted that the delay of two years in lodging the appeal was inordinate and inexcusable because the applicant failed to advance the reasons for the delay.



Furthermore, the sentence of 30 years imprisonment was unlawful since under the law, the applicant is to serve a mandatory sentence of death. He therefore prayed that the application be dismissed.

5. Under rule 4 of the Court of Appeal Rules 2022, this Court has discretion to extend time limited by those Rules. In determining an application of this nature, this Court is alive to the principles set out by this Court in *Wasike v Swala* [1984] KLR 591 where this Court stated:

“As Rule 4 now provides that the Court may extend the time or such terms as it thinks just, an applicant must now show, in descending scale of importance, the following factors:

- a. That there is merit in his appeal.
- b. That the extension of time to institute and/or file the appeal will not cause undue prejudice to the respondent; and
- c. That the delay has not been inordinate.”

6. Has the applicant met the above threshold? This application has been filed two years from the date the impugned judgment was delivered. The applicant explained that his attempts to appeal several times has elicited no favourable response. Though the delay is inordinate, the applicant has explained the delay. However, it is not satisfactory in my view, but I also take cognizance that the appellant is a lay man and currently in prison and can only rely on the paralegal services, if available to pursue his legal rights.
7. In the circumstances, I am inclined to exercise my discretion in favour of the appellant. As to lawfulness or otherwise of the sentence, that can only be determined by a full bench. However, the applicant should seek legal advice on this legal issue, that can haunt him in future, but I say no more.
8. In view of the foregoing circumstances, I direct the applicant to file his notice of appeal within 14 days from the date of this order. Thereafter, the record of appeal shall be filed within 30 days.

DATED AND DELIVERED AT NAKURU THIS 10TH DAY OF NOVEMBER 2025.

M. GACHOKA C.Arb, FCI Arb.

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JUDGE OF APPEAL

