

**IN THE COURT OF  
APPEAL AT  
ELDORET**

**(CORAM: GACHOKA, J.A - IN  
CHAMBERS) CRIMINAL APPLICATION NO.  
E012 OF 2025**

**BETWEEN  
JOSEPH KIMANI KARIUKI.....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 Eldoret (Ominde, J.) delivered on 6<sup>th</sup> March, 2025*

***in***

***HCCRA No. E052 of 2023)***

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**RULING**

1. In his Notice of Motion dated 22<sup>nd</sup> July 2025, the applicant seeks leave of this Court to appeal out of time from the conviction and sentence upheld by the Eldoret High Court in ***HCCRA No. E052 of 2025***. The applicant was charged in ***Eldoret CM Case No. 3484 of 2019*** with the offence of Robbery with Violence contrary to Section 296 (2) of the Penal Code. The trial court convicted him as charged and sentenced to life imprisonment. The

appellant appealed before the Eldoret High Court. In her judgment dated 6<sup>th</sup> March 2025, *Ominde J.* dismissed his appeal on both conviction and sentence.

2. The applicant is aggrieved by those findings. In support of his application, the applicant annexed his supporting affidavit sworn on 22<sup>nd</sup> July 2025. He urged this Court to allow his application. The applicant did not annex a memorandum of appeal but in this supporting affidavit and grounds in support of the application. He states that following the dismissal of his appeal by the High Court, he communicated with his family with a view of engaging an advocate to file a second appeal before this Court on his behalf and that it has since come to his attention that no legal representative was secured as had been agreed. He now seeks leave to appeal out of time on that basis.
3. The respondent did not oppose the application. Through Prosecution Counsel, Mr. Okaka Prosecution, it filed written submissions dated 24<sup>th</sup> November 2025. It was submitted that the explanation advanced for the delay is plausible given the applicant's continued incarceration. He was therefore deserving of the exercise of the discretionary powers donated to this Court.
4. The discretion set out in rule 4 of the Court of Appeal Rules, 2022 is wide and discretionary. The guiding principles are not

exhaustive. However, the Court is urged to take into account  
the

length of delay involved, the reasons for delay, possible prejudice on any party, the conduct of the parties, the need to balance competing interests, the need to protect a party's opportunity to fully litigate his or her dispute and the chances of succeeding. (See **Henry Mukora Mwangi vs. Charles Gichina Mwangi**, Civil Application No. Nai. 26 of 2004.)

5. I have considered the reason advanced by the applicant, the respondent's written submissions and the law. I note that the delay in filing the application is about four (4) months only which is not inordinate.
6. I am satisfied that the application has met the threshold for the exercise of discretion by this Court. Let the applicant have his day in court. Accordingly, 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 45 days.

**Dated and delivered at Eldoret this 20<sup>th</sup> day of February, 2026.**

**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**