

**IN THE COURT OF
APPEAL AT
ELDORET**

**(CORAM: GACHOKA, J.A - IN
CHAMBERS) CRIMINAL APPLICATION NO.
E035 OF 2024**

BETWEEN
LEONARD MUKUNZA.....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 (C. Githua, J.) delivered on 27th June, 2018

in

HCCRA No. 59 of 2018)

RULING

1. In his Notice of Motion dated 6th June 2024, the applicant seeks leave of this Court to appeal out of time from the conviction and sentence of Eldoret High Court in ***HCCRA No. 59 of 2018***. 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 him as charged but the date of the judgment is not disclosed in the documents annexed to the application.
2. The applicant is aggrieved against the conviction and sentence. In support of his application, the applicant annexed his sworn

supporting affidavit sworn on 7th June 2024. He urged this Court to allow his application and attributed the delay to the failure to be

supplied with the High Court Judgment on time. He annexed a notice of appeal similarly dated 7th June 2024 though the date of filing is not shown and it is not clear whether it was filed in Court. He also filed a homemade memorandum of appeal raising 3 grounds.

3. The respondent did not oppose the application. Through Principal Prosecution Counsel Mr. S.G Thuo, it filed written submissions dated 3rd February 2026. It was argued that the reason for the delay is plausible given his 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. This is a scanty

application. The impugned judgment was delivered on 27th June 2018 yet the present application was not filed until 6th June 2024, a delay of nearly six years. That is inordinate delay by any measure. More critically, the applicant has not offered a satisfactory explanation for this delay. A bare assertion that he was not supplied with the High Court proceedings on time is insufficient. There is nothing on record to show that the applicant took any steps to pursue his appeal during this prolonged period including writing to the High Court registry to bespeak proceedings, petitioning the Officer in Charge of his prison for assistance in accessing the courts or legal aid. The duty to explain the entire period of delay rests on the applicant and he has not discharged it. In the premises, this application is dismissed.

Dated and delivered at Eldoret this 20th day of February, 2026.

M. GACHOKA C.Arb, FCI Arb.

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR