

**IN THE COURT OF
APPEAL AT
ELDORET**

**(CORAM: GACHOKA, J.A - IN
CHAMBERS) CRIMINAL APPLICATION NO.
E051 OF 2024**

BETWEEN

**ANDREW KIPROTICH MUSTUNI.....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 Bungoma (D. Kemei, J.) delivered on 31st January 2024

in

HCCRA No. E81 of 2019)

RULING

1. In his Notice of Motion dated 10th July 2024, the applicant seeks leave of this Court to appeal out of time from the conviction and sentence upheld by the Bungoma High Court in ***HC Petition No. E81 of 2024***. The applicant was charged in ***Bungoma HCCRC No. 47 of 2008*** with the offence of murder contrary to section 203 as read with section 204 of the Penal Code where he was tried, convicted and sentenced.

In ***HC Petition No. E81 of 2024,***

Kemei, J. upheld the conviction and sentenced him to life imprisonment.

2. The applicant is aggrieved. In support of his application, he has attached his supporting affidavit, notice of appeal and memorandum of appeal. He urged this Court to allow his application for the reason that he was unable to secure the services of a lawyer due to financial constraints.
3. The respondent supported the application by way of its written submissions and a list of authorities dated 3rd March 2026. Principal Prosecution Counsel for the State Mr. Kiarie urged this Court to allow the application as the delay in filing the application had been explained.
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.

5. I have considered the reason advanced by the applicant, the period of delay and the law. The reason for filing the appeal out of time has convincingly explained the delay. Further, the application has been filed six months after the impugned judgment was delivered. The delay is therefore not inordinate. I am therefore satisfied that the application has met the threshold for the exercise of discretion by this Court. Consequently, the applicant shall file his notice of appeal within 14 days from the date of this order. Under rule 64 of the Rules of this Court, the Registrar of the High Court is to prepare the record of appeal within 60 days of the filing of the notice of appeal. Therefore, a copy of this ruling shall be served on the Deputy Registrar, Bungoma High Court, upon filing of the notice of appeal for compliance.

Dated and delivered at Eldoret this 6th day of March, 2026.

M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR