



REPUBLIC OF KENYA



KENYA LAW
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**Kimani v Republic (Criminal Application E232 of 2024)
[2025] KECA 422 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KECA 422 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E232 OF 2024
PM GACHOKA, JA
FEBRUARY 28, 2025**

BETWEEN

WILSON KURIA KIMANI 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 Narok (Bwonwonga,
J.) delivered on 16th October 2018 in HCCRA No. 48 of 2017)*

RULING

1. In his Notice of Motion dated 5th November 2024, the applicant seeks the leave of this Court to appeal out of time against the conviction and sentence of the High Court sitting at Narok in HCCRA No. 48 of 2017. In Narok CM Criminal Case No. 1640 of 2013, the applicant was charged with the offence of robbery with violence contrary to section 296 (2) of the Penal Code. The matter went for full trial where the applicant was convicted and sentenced to death. His sentence was later commuted to life imprisonment. On appeal before the Narok High Court, Bwonwonga, J. dismissed the applicant's appeal on conviction and sentence on 16th October 2018.
2. It is those findings that have galvanized the applicant to file the present application. It is supported by his affidavit dated 5th November 2024 and his undated Notice of Appeal. He has urged this Court to consider that he was not furnished with the judgment timeously to enable him file his appeal on time.
3. The application was not opposed. In its written submissions dated 3rd January 2025, the state, through Senior Assistant Director of Public Prosecutions Mr. Omutelema submitted that while there was a delay in filing the application, the same ought to be allowed since the sentence meted out was weighty.



- 4. Rule 4 of this Court’s rules provides that the Court may extend the time limited by these Rules for the doing of any act authorized or required by the Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.
- 5. I have considered the application, the supporting affidavit, the annexures thereto, the respondent’s submissions and the law. I am satisfied to hold that the application has met the threshold for the exercise of discretion by this Court. I note that the applicant has taken a period of six years to institute the present application. That amounts to unreasonable delay. However, in the interest of justice, and based on the reasons advanced, the applicant ought to benefit from the discretionary powers set out in Rule 4 of the *Court of Appeal Rules*. I will thus reluctantly allow the application and 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 and served within 30 days.

DATED AND DELIVERED AT NAKURU THIS 28TH DAY OF FEBRUARY 2025.

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

