



REPUBLIC OF KENYA



KENYA LAW
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**Lelerte v Republic (Criminal Application E238 of 2024)
[2025] KECA 371 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KECA 371 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E238 OF 2024
PM GACHOKA, JA
FEBRUARY 28, 2025**

BETWEEN

LESIATO LELERTE 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 Nakuru (Omondi, J.) delivered by Ouko, J. on 22nd February 2012 in HCCRA No. 94 of 2009)

RULING

1. By Notice of Motion dated 20th November 2024, the applicant seeks leave of this Court to appeal out of time against the conviction and sentence of the Nakuru High Court in HCCRA No. 94 of 2009. The applicant was charged in Naivasha CM Criminal Case no. 1940 of 2007 with the offence of robbery with violence contrary to section 296 (2) of the *Penal Code*. After full trial, the applicant was convicted and sentenced to death. His first appeal before the Nakuru High Court was dismissed on 22nd February 2012.
2. The applicant is aggrieved with those findings. His application is supported by the grounds on the body of the application, his supporting affidavit, his memorandum of appeal and notice of appeal all dated 20th November 2024. He urged this Court to allow the application as he was not furnished with the proceedings in good time to enable him appeal in good time.
3. The state filed its written submissions dated 3rd January 2025.

Senior Assistant Director of Public Prosecutions Mr. Omutelema submitted that the applicant had taken 12 years to file the application and the delay was therefore inordinate. He observed that no reasons had been advanced to explain the delay. Nonetheless, he urged this Court to allow the application as the sentence meted out was weighty.



4. The Court in Paul Wanjohi Mathenge vs. Duncan Gichane Mathenge [2013] eKLR held as follows regarding the powers donated under rule 4 of this Court’s rules, the provision the application is hinged upon:

“The discretion under Rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance.”

5. I have considered the reason advanced by the applicant, the respondent’s submissions, and the law. I have taken note of the fact that the High court’s judgment was delivered on 22nd February 2012. The applicant has not demonstrated the difficulties he faced in his quest to appeal before the Court of Appeal since 2012. It has been 13 years since the applicant took any action to advance an appeal before us. For this reason, I am not persuaded that the applicant ought to benefit from the discretionary powers provided in rule 4 of the Court of Appeal Rules 2022. Accordingly, the application lacks merit and it is hereby dismissed.

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

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M. GACHOKA C.Arb, FCIArb.

JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

Deputy Registrar

