



REPUBLIC OF KENYA



KENYA LAW
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**Rotich v Republic (Criminal Application E239 of 2024)
[2025] KECA 385 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KECA 385 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E239 OF 2024
PM GACHOKA, JA
FEBRUARY 28, 2025**

BETWEEN

ISAIAH KIPKORIR ROTICH 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 (Gikonyo,
J.) delivered on 13th February 2023 in HCCRC No. 11 of 2019)*

RULING

1. The Notice of Motion before me for determination is dated 21st November 2024. The applicant seeks the leave of this Court to appeal out of time from the conviction and sentence of the Narok High Court in HCCRC No. 11 of 2019. 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 (Gikonyo, J.) convicted him of the offence and sentenced him to 30 years' imprisonment.
2. The applicant is dissatisfied with those findings. He annexed a notice of appeal and a memorandum of appeal both dated 21st November 2024 in support of the application. He urged this Court to allow his application for the reason that he was not supplied with the proceedings at trial in good time.
3. In the respondent's written submissions dated 3rd January 2025, Senior Assistant Director of Public Prosecutions Mr. Omutelema acting for the state did not oppose the application. He urged this Court to take into account the fact that the sentence meted out against the applicant was lengthy.
4. The discretion set out in rule 4 of the *Court of Appeal Rules* 2022 is wide and not exhaustive. However, in exercise of the same, a fact finder should not be guided by whims, caprice or sympathy.



5. I have considered the reason advanced by the applicant, the period of delay, the respondent's submissions and the law. I am 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. Thereafter, the record of appeal shall be filed and served within 45 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

