



REPUBLIC OF KENYA



KENYA LAW
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**Saitabau v Republic (Criminal Application E229 of 2024)
[2025] KECA 384 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KECA 384 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E229 OF 2024
PM GACHOKA, JA
FEBRUARY 28, 2025**

BETWEEN

ROBERT KAMWARO SAITABAU ALIAS RASTA APPLICANT

AND

REPUBLIC RESPONDENT

(An application for leave to appeal out of time against the conviction and sentence from the High Court of Kenya at Narok (Bwonwonga, J.) delivered on 26th September 2018 in HCCRC No. 33 of 2017)

RULING

1. The applicant has invoked the provisions of rule 4 of the [Court of Appeal Rules 2022](#) in his Notice of Motion dated 4th November 2024 seeking leave to appeal out of time against his conviction and sentence by the Narok High court in HCCRC No. 33 of 2017. The applicant was charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). In his judgment dated 26th September 2018, Bwonwonga, J. convicted the appellant for the offence and sentenced him to death. The applicant thereafter filed in the Narok High Court, Misc. Criminal Application no. E004 of 2021, seeking resentencing of his judgment. In it, the applicant averred in his statement dated 19th May 2021 that he had appealed to the Court of Appeal but his appeal had disappeared in the registry. In his ruling dated 6th December 2021, Gikonyo, J. dismissed the application urging the applicant to pursue his appeal in the Court of Appeal.
2. The application is supported by the applicant's supporting affidavit dated 4th November 2024 and his undated notice of appeal. The applicant has urged this Court to allow the application for the reason that he was never updated on the status of his appeal.
3. In its written submissions dated 3rd January 2025, the state, through Senior Assistant Director of Public Prosecutions Mr. Omutelema submitted that it did not oppose the application as the sentence meted



out was weighty. Furthermore, this was the applicant's first appeal and was therefore deserving of the Court's audience.

4. The discretion donated to extend time under the Rules was enunciated by this Court in *Henry Mukora Mwangi vs. Charles Gichina Mwangi* Civil Application No. Nai. 26 of 2004 thus:

“It has been stated time and again that in an application under rule 4 of the Rules the learned single Judge is called upon to exercise his discretion which discretion is unfettered. It may be appropriate to re-emphasize this principle by referring to the decision in *Mwangi v Kenya Airways Ltd.* [2003] KLR 486 in which this Court stated:

“Over the years, the Court has, of course set out guidelines on what a single Judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance, in *Leo Sila Mutiso -vs- Rose Hellen Wangari Mwangi* - Civil Application No. Nai. 255 of 1997 (unreported), the Court expressed itself thus:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: firstly, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”

5. I have considered the reason advanced by the applicant as set out in the application, his notice of appeal and the sentiments of the High Court in Narok High court Misc. Criminal Application no. E004 of 2021. I am persuaded that the applicant deserves the benefit of the exercise of this Court's discretion in his favor. Consequently, the Notice of Motion is allowed to the extent that the applicant shall file his notice of appeal within 14 days. 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, FCI Arb.

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

