



REPUBLIC OF KENYA



KENYA LAW
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**Waweru v Republic (Criminal Application E237 of 2024)
[2025] KECA 372 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KECA 372 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E237 OF 2024
PM GACHOKA, JA
FEBRUARY 28, 2025**

BETWEEN

SAMUEL BOSHI WAWERU 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 Naivasha (Nzioka,
J.) delivered on 30th August 2023 in HCCRA No. E053 of 2022)*

RULING

1. In his Notice of Motion dated 13th November 2024, the applicant seeks leave of this Court to appeal out of time from the conviction and sentence of the Naivasha High Court in HCCRA No E053 of 2022. The applicant was charged in Naivasha CM (SO) Case No E021 of 2021 with the offence of defilement contrary to section 8(1) as read with section 8 (2) of the [Sexual Offences Act](#). The trial court convicted him of the offence and was sentenced to life imprisonment. The appellant appealed before the Naivasha High Court. In her judgment dated 30th August 2023, Nzioka, J. dismissed his appeal on conviction and sentence.
2. The applicant is aggrieved. In support of his application, the applicant has attached his supporting affidavit, memorandum of appeal and notice of appeal all dated 13th November 2024. He urged this Court to allow his application for the reason that he was not supplied with a copy of the judgment in good time.
3. The appeal was canvassed on the basis of the parties diametrically opposed written submissions. The appellant's written submissions dated 4th October 2024 argued that his application was merited for the following reasons: the application was properly anchored on the provisions of Articles 22, 50 (2) (p) of the [Constitution](#), rule 4 of the [Court of Appeal rules](#) and section 379 of the [Criminal Procedure Code](#)



and; he did not appeal on time on account of the fact that his relatives promised to secure the services of a legal representative but the same did not materialize.

4. In the respondent's written submissions dated 3rd January 2025, Senior Assistant Director of Public Prosecutions Mr. Omutelema acting for the state observed that though the application was filed with inordinate delay, he did not oppose the application as the sentence meted out was lengthy.
5. 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.
6. 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

