



REPUBLIC OF KENYA



KENYA LAW
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**Irungu v Republic (Criminal Application E012 of 2025)
[2025] KECA 454 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KECA 454 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E012 OF 2025**

PM GACHOKA, JA

MARCH 7, 2025

[IN CHAMBERS]

BETWEEN

PAUL KAMAU IRUNGU 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 Nyabururu (Kariuki, J.) delivered on 13th March 2023 in HCCRC No. 16 of 2018)

RULING

1. By Notice of Motion dated 6th February 2025, the applicant has invoked rule 4 of the [Court of Appeal Rules](#) 2022 seeking leave to appeal out of time against his conviction and sentence by the Nyabururu High Court in HCCRC No. 16 of 2018. 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 13th March 2023, Kariuki, J. convicted the appellant for the offence and sentenced him to 30 years' imprisonment.
2. The applicant is aggrieved with those findings, hence the present application. It is supported by his affidavit sworn on 6th February 2025. The main ground advanced seeking extension of time to file appeal out of time is that the applicant was not furnished with the proceedings and judgment in good time.
3. In its written submissions dated 19th February 2025, the respondent, through learned Senior Assistant Director of Public Prosecutions Mr. Omutelema, submitted that though the delay was inordinate and no reasons were advanced as to why the applicant never followed up on the status of the proceedings and judgment, the application may be allowed on the basis that the applicant was appealing for the first time and the sentence meted out was lengthy.



4. The discretion to extend time under the rule 4 of the *Court of Appeal Rules* 2022 is unfettered. This Court required to take into account *inter alia*, the length of the delay, the reasons for the delay, the chances of the appeal succeeding and the degree of prejudice to the respondent if the application is granted. [See *Henry Mukora Mwangi v Charles Gichina Mwangi* Civil Application No. Nai. 26 of 2004.]
5. I have considered the reason advanced by the applicant, the respondent's submissions and the law. The applicant states that he was supplied with the judgment, a fact that is not denied by the respondent. 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 dated 6th February 2025 is allowed. The applicant shall file his notice of appeal within 14 days. Thereafter, the record of appeal shall be filed and served within 45 days.

DATED AND DELIVERED AT NAKURU THIS 7TH DAY OF MARCH 2025.

M. GACHOKA C.Arb, FCIArb.

JUDGE OF APPEAL

I certify that this is a True copy of the original

signed

DEPUTY REGISTRAR

