



**Kabulit v Republic (Criminal Application E008 of 2025)
[2025] KECA 490 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KECA 490 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E008 OF 2025
PM GACHOKA, JA
MARCH 7, 2025
[IN CHAMBERS]**

BETWEEN

MILTON KABULIT 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 (Ngugi, J.) delivered on 4th October 2021 in HC Pet No. 214 of 2018)

RULING

1. By Notice of Motion dated 13th January 2025, the applicant seeks leave of this Court to appeal out of time against the judgment in Nakuru High Court in HC Petition No. 214 of 2018.
2. By way of background, the applicant was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* in HCCRC No. 115 of 2008. He was convicted and sentenced to serve 56 years imprisonment. Thereafter, the applicant filed before this Court Criminal Appeal No. 340 of 2012. The appeal was dismissed. Not relenting, the applicant petitioned before the Nakuru High Court in HC Petition No. 214 of 2018. That petition was dismissed by Ngugi, J. (as he then was) on 4th October 2021. It is those findings that have implored the applicant to file a notice of appeal out of time.
3. The applicant's Notice of Motion is supported by the grounds on the body of the application and his supporting affidavit dated 12th December 2024. He urged this Court to allow the application as he was not furnished with the judgment in good time.



4. The state filed its written submissions dated 19th February 2025. Prosecution Counsel II S. K. Rutto submitted that though the delay in filing the notice of appeal was inordinate, the sentence meted out was weighty. Given that it was his first appeal, the respondent did not oppose the application.
5. The Court in *Paul Wanjohi Mathenge v 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.”

6. I have considered the reason advanced by the applicant, the delay of four years, the respondent's submissions, and the law. I note that the applicant filed an appeal against conviction and sentence that was dismissed by this Court. In the circumstances of this application, I am not satisfied that the applicant has met the threshold for the exercise of this Court's discretion. Consequently, it is my finding that the application has no merit and it is hereby dismissed.

DATED AND DELIVERED AT NAKURU THIS 7TH DAY OF MARCH 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

