



**Kanari v Republic (Criminal Application E009 of 2025)
[2025] KECA 445 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KECA 445 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E009 OF 2025
PM GACHOKA, JA
MARCH 7, 2025**

BETWEEN

JOSEPH EKIRU KANARI 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 (Meoli, J.) delivered on 13th July 2018 in HCCRA No. 36 of 2015)

RULING

1. In his Notice of Motion dated 14th January 2025, 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. 36 of 2015. The applicant faced two counts in Naivasha CMC Case No. 967 of 2014; robbery with violence contrary to section 296 (2) of the *Penal Code* and rape contrary to section 3 (1) as read with section 3 (3) of the *Sexual Offences Act*. The trial court convicted him of both offences. He was sentenced to life imprisonment on the first count while the sentence on count II was held in abeyance. The appellant appealed before the Naivasha High Court. In her judgment delivered on 13th July 2018, Meoli, J. dismissed his appeal both on conviction and sentence.
2. The application is supported by the grounds on its face and his supporting affidavit 14th January 2025. He urged this Court to allow his application as his mitigation was not considered during sentence.
3. In the respondent's written submissions dated 19th February 2025, Senior Assistant Director of Public Prosecutions Mr. Omutelema, observed that though the application was filed with inordinate delay, he did not oppose the application as the sentence meted out was lengthy.
4. 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, the reasons for delay, possible prejudice on the respondent, the conduct of the parties, the need



to balance competing interests, the need to protect a party's opportunity to fully litigate his dispute and the chances of succeeding.

5. I have considered the application, the period of delay, the respondent's submissions and the law. The applicant has taken a period of seven years to demonstrate interest in appealing against the decision of the High Court. From the scanty information in the supporting affidavit, the applicant has only addressed the merit of the intended appeal. The delay is inordinate. However, the interest of justice militates towards granting leave rather than denying. Consequently, I will reluctantly allow his application and direct that he files 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 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

