



**Kareng'a v Republic (Criminal Application E007 of 2025)
[2025] KECA 455 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KECA 455 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E007 OF 2025
PM GACHOKA, JA
MARCH 7, 2025**

BETWEEN

FRANCIS KARENG'A 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 HCCRC 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 judgement (Ngugi J.) in HC Petition No. 214 of 2018.
2. A brief abridgment of the facts giving rise to this application is that 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. The trial court convicted him of the offence and sentenced him to 56 years' imprisonment. Aggrieved, the applicant appealed before this Court in Criminal Appeal No. 340 of 2012. His appeal was dismissed both on conviction and sentence.
3. 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.
4. The applicant is dissatisfied with those findings hence the application. It is supported by his affidavit dated 12th December 2024. He urged this Court to allow his application for the reason that he was not supplied with the impugned judgment in good time.



5. In the respondent's written submissions dated 19th February 2025, Prosecution Counsel II S. K. Rutto, acting for the state, did not oppose the application. He urged this Court to take into account the fact that the sentence meted out against the applicant was weighty.
6. The discretion set out in rule 4 of the *Court of Appeal Rules* 2022 is wide and not exhaustive. However, the exercise of discretion, should not be guided by whims, caprice or sympathy.
7. I have considered the reason advanced by the applicant, the period of delay, the respondent's submissions and the law. It is a fact that the appellant filed an appeal against the conviction and sentence, which was dismissed by this Court. Considering the circumstances of this application and the reasons advanced, I am not satisfied that the applicant has given reasons for the exercise of discretion in his favor.
8. In the circumstances, I am not satisfied that the application has met the threshold for the exercise of discretion by this Court and consequently, the application is dismissed.

DATED AND DELIVERED AT NAKURU THIS 7TH DAY OF MARCH 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

