



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kinuthia v Republic (Criminal Application E017 of 2025)  
[2025] KECA 655 (KLR) (9 April 2025) (Ruling)**

Neutral citation: [2025] KECA 655 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E017 OF 2025  
PM GACHOKA, JA  
APRIL 9, 2025**

**BETWEEN**

**JOHN NG'ANG'A KINUTHIA ..... 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 (H.K. Chimitei, J.) delivered on 1st March 2023 in HCCRA No. 21 of 2020)*

**RULING**

1. In his Notice of Motion dated 17<sup>th</sup> February 2025, the applicant seeks the leave of this Court to appeal out of time against the conviction and sentence of the High Court sitting at Nakuru in HCCRA No. 21 of 2020. In Nakuru CM Criminal Case No. 644 of 2018 and 2955 of 2013, the applicant faced a raft of charges: He was charged with the offence of robbery with violence contrary to section 296 (2) of the Penal Code. The appellant was also charged with the offence of rape contrary to section 3 (1) (a) and (b) as read with section 3 (3) of the Sexual Offences Act. In the alternative, the appellant faced an alternative count of indecent act with an adult contrary to section 11 (a) of the Sexual Offences Act. Finally, the appellant was charged with the offence of being in possession of imitation firearm contrary to section 34 (1) of the Firearms Act.
2. The matter went for full trial where the applicant was convicted of all the offences and sentenced to 20 years, 35 years and 2 years imprisonment respectively. The sentences were ordered to run concurrently. The appellant appealed before the Nakuru High Court in HCCRA No. 21 of 2020. Chimitei, J. dismissed the applicant's appeal on conviction and sentence on 1<sup>st</sup> March 2023.



- 3. It is those findings that have galvanized the applicant to file the present application. It is supported by his affidavit sworn on 17<sup>th</sup> February 2025. He has urged this Court to consider that on account of poverty, he was unable to pay the requisite fees to enable him prepare his record of appeal in good time.
- 4. The application was opposed. In its written submissions dated 24<sup>th</sup> March 2025, the state, through Senior Assistant Director of Public Prosecutions Mr. Omutelema acknowledged that while the sentence meted out was lengthy, there was a delay in filing the application. In addition, no reasons had been furnished to explain the delay in filing the appeal.
- 5. Rule 4 of this Court’s rules provides that the Court may extend the time limited by these Rules for the doing of any act authorized or required by the Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.
- 6. I have considered the application, the supporting affidavit, the respondent’s submissions and the law. I have also considered the reasons advanced and the period of delay. Though no good reasons have been advanced to explain the delay, the applicant should not be driven away from the seat of justice. For that reason, I will reluctantly allow the application and direct the applicant to 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 30 days.

**DATED AND DELIVERED AT NAKURU THIS 9<sup>TH</sup> DAY OF APRIL 2025.**

**M. GACHOKA C.ARB, FCIARB.**

.....  
**JUDGE OF APPEAL**

I certify that this is a True copy of the original  
Signed  
**DEPUTY REGISTRAR**

