



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwangi v Republic (Criminal Application E014 of 2025)  
[2025] KECA 652 (KLR) (9 April 2025) (Ruling)**

Neutral citation: [2025] KECA 652 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E014 OF 2025  
PM GACHOKA, JA  
APRIL 9, 2025**

**BETWEEN**

**JOHN MARA MWANGI ..... 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 (Nzioka, J.) delivered on 3rd July 2023 in HCCRA No. E048 of 2022)*

**RULING**

1. In his Notice of Motion dated 17<sup>th</sup> February 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. E048 of 2022. The applicant was charged in Naivasha CM Criminal Case No. 2271 of 2018 with the offence of shop breaking and committing a felony contrary to section 306 (a) of the *Penal Code*. He also faced an alternative count of handling stolen property contrary to section 322 of the *Penal Code*. The trial court on 25<sup>th</sup> August 2018, convicted him on the main count and was sentenced to seven years' imprisonment. The appellant appealed before the Naivasha High Court. In her judgment dated 3<sup>rd</sup> July 2023, Nzioka, J. dismissed his appeal on conviction but set aside the findings on sentence. The learned judge substituted the sentence of seven years with five years further ordering the same to run from 13<sup>th</sup> October 2022.
2. The applicant is aggrieved. In support of his application, the applicant has attached his supporting affidavit. He urged this Court to allow his application for the reason that he was not supplied with a copy of the judgment in good time.
3. In its written submissions dated 24<sup>th</sup> March 2025, the state, through Senior Assistant Director of Public Prosecutions Mr. Omutelema, opposed the application. He argued that the delay in filing the appeal



was inordinate and the reasons for the delay were not satisfactory. The respondent thus prayed that the application be dismissed.

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 involved, the reasons for delay, possible prejudice on any party, the conduct of the parties, the need to balance competing interests, the need to protect a party's opportunity to fully litigate his or her dispute and the chances of succeeding.
5. I have considered the reason advanced by the applicant, the period of delay, the respondent's submissions and the law. The reasons for filing the appeal out of time have convincingly explained the delay. I am therefore satisfied that the application has met the threshold for the exercise of discretion by this Court. Consequently, the applicant shall 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.**

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**JUDGE OF APPEAL**

I certify that this is a True copy of the original.

Signed

**DEPUTY REGISTRAR**

