



REPUBLIC OF KENYA



KENYA LAW
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**Gachangi v Republic (Criminal Application E016 of 2025)
[2025] KECA 1442 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1442 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E016 OF 2025**

S OLE KANTAI, JA

JULY 31, 2025

BETWEEN

ADRIAN MACHARIA GACHANGI APPLICANT

AND

REPUBLIC RESPONDENT

(An application for leave to file an appeal out of time against the Judgment of the High Court at Nyeri (H. Ongudi, J.) delivered on 11th September, 2020 in H.C. CRA. No. 35 of 2019)

RULING

1. The applicant, Adrian Macharia Gachangi has moved the Court under rules 31 and 42 of the Court of Appeal Rules:

“That, this Hon. Court be pleased to admit this application to do leave (sic) to appeal out of time as pursuant to rules 31 and 42 of the court of appeal rules and any other applicable provision of the law.”
2. He says in the Motion and in a supporting affidavit that he was charged, convicted and sentenced to life imprisonment for the “charges “ of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act*; that he appealed to the High Court in Nyeri Criminal Appeal No. 35 of 2019 which was dismissed on conviction but allowed on sentence which was substituted with imprisonment for 30 years by Ongudi, J. on 11th September, 2020; that he thereafter filed an application for review of sentence which was not successful. He says that he is 74 years old “I do not have any option to seek justice.” He prays that he be granted leave to appeal out of time.
3. I have seen the respondent’s written submissions where it is stated that the respondent does not oppose the application.



4. The principles that apply in an application of this nature were set out in *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* [1999] 2 EA 231 as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this Court takes into account in deciding whether to grant an extension of time, are first, the length of the delay, secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted, and fourthly, the degree of prejudice to the respondent if the application is granted.”

5. The applicant’s appeal to the High Court was partly successful in that the sentence earlier imposed on him was reduced. He says that he thereafter applied to the High Court for a review of that sentence but his petition was unsuccessful in view of a decision of the Supreme Court of Kenya to the effect that mandatory sentences are unconstitutional in murder cases. I am aware of that case – *Francis Karioko Muruatetu & Another vs. Republic & 5 Others* [2021] eKLR. The case is commonly referred to as “Muruatetu 2”.
6. I take judicial notice of the confusion that arose after the Supreme Court decision in *Francis Karioko Muruatetu & Another vs. Republic* [2017] eKLR a judgment that led parties who had been convicted of various offences filing petitions for review of sentences to the High Court or even to subordinate courts. That is what the applicant did by filing a petition for review of sentence to the High Court.
7. I am satisfied that there is a valid reason for delay in bringing the application. The respondent will not be prejudiced in any way by a grant of leave and has stated that it does not oppose the same.
8. I allow the Motion. Let the applicant file Notice of Appeal within ten (10) days of today and record of appeal within twenty one (21) days thereafter.

DATED AND DELIVERED AT NYERI THIS 31ST DAY OF JULY, 2025.

S. OLE KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

Deputy Registrar

