



REPUBLIC OF KENYA



KENYA LAW
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**Kirui v Republic (Criminal Application E089 of 2024)
[2024] KECA 1375 (KLR) (4 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1375 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E089 OF 2024
PM GACHOKA, JA
OCTOBER 4, 2024**

BETWEEN

JOSEPH KIBET KIRUI 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 (Mulwa, J.) delivered on 30th April, 2019 in HCCRC No. 46 of 2012)

RULING

1. The applicant has filed the Notice of Motion dated 24th June 2024. He seeks leave of this Court to file an appeal out of time from the conviction and sentence of the High Court at Nakuru in HCCRC No 46 of 2012. In her judgment dated 30th April 2019, the learned Judge (Mulwa, J.) convicted the applicant for the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). He was then sentenced to life imprisonment.
2. The application is supported by the grounds on the body of the motion and the supporting affidavit of the applicant. The applicant seeks leave of this Court to appeal out of time for the following reasons: that the ingredients to the offence of murder had not been established to the required standard; that the trial court did not consider his defence; and that he was not supplied with the impugned judgment on time. Therefore, he could not appeal on time. In support of his application, the applicant annexed his memorandum of appeal and notice of appeal both dated 24th June 2024.
3. Though the application was heard by way of written submissions, I was only in receipt of those of the respondent's, dated 11th September 2014. The respondent submits that taking into account the fact that the applicant was sentenced to life imprisonment, the inordinate delay in filing the appeal and the fact that the applicant was unable to file his appeal on his own, it was not opposed to the application.



4. Rule 4 of the [Court of Appeal Rules 2022](#) gives this Court discretionary powers to extend time. In deciding whether or not to grant an extension of time, the Court is called upon to take into account the length of the delay, the reason for the delay, the chances of the appeal succeeding if the application is granted and the degree of prejudice to the respondent if the application is granted. It is also trite that the grounds are not exhaustive and that each case will be considered on its merits. I shall adopt the findings of this Court in [Mungatu v Republic](#) [2023] KECA 671 (KLR). Citing the decision in [Muringa Company Limited v Archdiocese of Nairobi Registered Trustees](#) [2020] eKLR, the Court held as follows:

“Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party’s opportunity to fully agitate its’ dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, *prima facie*, the intended appeal has chances of success or is a mere frivolity. In considering the last principle, it must be borne in mind that it is not the role of the single judge to determine definitively the merits of the intended appeal. That is for the full court if and when it is ultimately presented with the appeal.”

5. I have considered the reasons advanced by the applicant as set out in the Motion, the affidavit and the respondent’s concession to the application. I have also considered the draft memorandum of appeal annexed to the application. Although the application is not opposed, the applicant must satisfy the principles that have been laid down over the years. The onus to satisfy those grounds is thus borne on the applicant.
6. The applicant was convicted on 30th April 2019 and there is no explanation for the delay of over 5 years. The applicant needs to note that the rules apply to all parties whether in custody or not. An applicant in custody is expected to explain the challenges that he or she is facing which may include the unwillingness of the prison authorities to assist in obtaining a copy of the judgement. The delay of over 5 years is not explained.
7. As already stated, the list of factors to be considered is not exhaustive. I note that one of the grounds raised is the life sentence that was imposed on him by the trial court. It is a matter of public knowledge that this question of life sentence has attracted a lot of public interest and various schools of thought are emerging. On this ground alone, I am inclined to exercise my discretion in favour of the applicant so that he can have his day in Court to advance his grounds of appeal.
8. Accordingly, the application dated 24th June 2024 is hereby allowed. The applicant shall file his appeal within 30 days from the date of this ruling.

DATED AND DELIVERED AT NAKURU THIS 4TH DAY OF OCTOBER 2024.

M. GACHOKA C.Arb, FCIArb.

JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

