



**Kanyari v Republic (Criminal Application E110 of 2024)
[2024] KECA 1644 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1644 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E110 OF 2024
PM GACHOKA, JA
NOVEMBER 15, 2024
[IN CHAMBERS]**

BETWEEN

SIMON WANGURA KANYARI APPLICANT

AND

REPUBLIC RESPONDENT

(An application for leave to appeal out of time against the conviction and sentence from the judgment of the High Court of Kenya at Naivasha (Ngenye, J.) delivered on 19th May 2021 in HCCRA No. 36 of 2017)

RULING

1. In his Notice of Motion dated 21st June 2023, the applicant seeks leave of this Court to appeal out of time from the conviction and sentence of the High Court at Naivasha in HCCRA No. 36 of 2017 delivered on 19th May 2021. The applicant was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act* in Engineer CM (SO) Case No. 793 of 2017. He was found guilty and sentenced to life imprisonment. His appeal against the conviction and sentence was dismissed by (Ngenye, J.) (as she then was) on 19th May 2021.
2. It is those findings that have precipitated the filing of the present application. It is supported by the grounds on the face of it and the supporting affidavit of the applicant sworn on 2nd July 2024. The applicant seeks leave to appeal out of time for the reason that he was not supplied with the judgment of the High Court in good time to enable him file the appeal. The applicant annexed his notice of appeal together with the memorandum of appeal to the application.
3. In the written submissions dated 30th October 2024, Senior Assistant Director of Public Prosecutions Mr. Omutelema acting for the state did not oppose the application on account of the fact that the sentence imposed was lengthy.



4. The discretionary powers to extend time is provided in rule 4 of the *Court of Appeal Rules* 2022. This Court *Mungatu v Republic* [2023] KECA 671 (KLR) citing with approval the decision in *Muringa Company Limited v Archdiocese of Nairobi Registered Trustees* [2020] eKLR laid out the following considerations that this Court ought to take into account:

“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 supporting affidavit and the respondent’s concession to the application. I have also considered the draft memorandum of appeal annexed to the application. I am persuaded to hold that the application has met the threshold for the exercise of discretion by this Court. Consequently, the application dated 21st June 2023 is allowed. 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 from the date hereof.

DATED AND DELIVERED AT NAKURU THIS 15TH DAY OF NOVEMBER 2024.

M. GACHOKA C.Arb, FCIArb.

JUDGE OF APPEAL

I certify that this is a True copy of the original

signed

DEPUTY REGISTRAR

