



REPUBLIC OF KENYA



KENYA LAW
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**Kariuki v Republic (Criminal Application E125 of 2024)
[2024] KECA 1646 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1646 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E125 OF 2024
PM GACHOKA, JA
NOVEMBER 15, 2024**

BETWEEN

PETER KIERU KARIUKI 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 Nakuru (Musinga, J.) delivered by (Kimaru, J.) on 9th May 2005 in HCCRA No. 60 of 2001)

RULING

1. In his undated application, the applicant seeks to appeal out of time against the conviction and sentence of the Nakuru High Court in HCCRA No. 60 of 2001. The applicant was charged in Naivasha CM Criminal Case no. 1549 of 2001 with the offence of robbery with violence contrary to section 296(2) of the Penal Code. The applicant was convicted and sentenced to death. His appeal against that conviction and sentence was dismissed by Musinga, J. (as he then was) on 9th May 2005 hence the application.
2. The sole reason justifying the application is that the applicant was not furnished with the judgment to enable him file on time. The applicant annexed his memorandum of appeal in support of the application.
3. The application was canvassed by way of written submissions.

The applicant's submissions dated 18th October 2024 argued that since his relatives failed to afford him a legal representative, when they had promised to do so, and having failed to file a notice of appeal on account of issues beyond his control, he was deserving of the orders sought. He cited that Articles 22, 50 (2)(p) of the Constitution, section 379 of the Criminal Procedure Code and rule 4 of the Court of Appeal Rules justified his application. He prayed that the application be allowed as his appeal was merited with high chances of success.



4. The application was not opposed. In its written submissions dated 30th October 2024, the state, through Senior Assistant Director of Public Prosecutions Mr. Omutelema argued that the application ought to be allowed since the sentence meted out was heavy.
5. Under rule 4 of the *Court of Appeal Rules 2022*, this Court has discretion to extend time limited by those Rules. In determining an application of this nature, this Court is alive to the principles set out by this Court in *Wasike vs. Swala* [1984] KLR 591 where this Court stated:
 - a. That there is merit in his appeal.
 - b. That the extension of time to institute and/or file the appeal will not cause undue prejudice to the respondent; and
 - c. That the delay has not been inordinate.”
6. Has the applicant met the above threshold? What is considerably apparent is that the applicant has brought this application a whopping nineteen years later. The only reason advanced by the applicant is that he was unable to lodge the appeal in good time since he was unable to procure the judgment in good time. Whereas the court appreciates that the applicant is acting in person and is currently serving a sentence, he owes this court a duty to explain a delay of 19 years. The least he should have done is to explain the difficulties he has faced and the attempts that he has made through the prison authorities to obtain the judgement. The rules of this court apply equally to all parties and unless one was in a coma or another good reason is given, a delay of 19 years is not excusable. Therefore, this Court cannot turn a blind eye from the colossal period that has passed. Furthermore, the applicant has not even attached his notice of appeal seeking to challenge that decision.
7. In my considered view, I am not convinced that the applicant is deserving of the orders sought on account of the delay that is inordinate. The explanations preferred were not satisfactory and do not justify that delay. Accordingly, I am inclined to dismiss the application in its entirety and it is so ordered.

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

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

