



**Kariuki v Republic (Criminal Application E126 of 2024)
[2024] KECA 1641 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1641 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E126 OF 2024
PM GACHOKA, JA
NOVEMBER 15, 2024**

BETWEEN

DAVID MACHARIA 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 Naivasha (Ngenye, J.) delivered on 24th February 2022 in HCCRA No. 14 of 2019)

RULING

1. In his Notice of Motion dated 12th July 2024, the applicant seeks leave of this Court to appeal out of time against the conviction and sentence of the High Court sitting at Naivasha in HCCRA No 14 of 2019. The applicant was charged in Naivasha CM Criminal Case No 45 of 2018 with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act*. After full trial, the applicant was convicted and sentenced to life imprisonment. His appeal against that conviction and sentence was dismissed by Ngenye, J. (as she then was) on 24th February 2022. It is for this reason that the applicant seeks to appeal against that judgment.
2. The application is supported by the grounds on the body of the Motion and his supporting affidavit sworn on 12th July 2024. He prayed that his application be allowed for the following reasons: the age of the complainant was not taken into account when convicting him; the sentence metered out was harsh and excessive; he was not supplied with the judgment of the High Court in good time to enable him pursue the appeal.
3. The application was not opposed. In its written submissions dated 30th October 2024, the state, through Senior Assistant Director of Public Prosecutions Mr. Omutelema submitted that while there



was a delay in filing the application, the same ought to be allowed since the sentence meted out was lengthy.

4. Rule 4 of this [Court's Rules 2022](#) provides that the Court may extend the time limited by these Rules for the doing of any act authorized or required by the Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended. Its principles have been well enunciated by our Apex Court in the case of [Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others](#) [2014] eKLR. We need not rehash those principles.
5. I have considered the Notice of Motion, the supporting affidavit, the respondent's concession to the application and the law. I have also considered the draft memorandum of appeal annexed to the application. I am satisfied to hold that the application has met the threshold for the exercise of discretion by this Court. Consequently, the application dated 12th July 2024 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 to fast track the disposal of the appeal.

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

