



**Kipng'etich v Republic (Criminal Application E127 of 2024)
[2024] KECA 1650 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1650 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E127 OF 2024
PM GACHOKA, JA
NOVEMBER 15, 2024**

BETWEEN

WESLEY KORIR KIPNG'ETICH 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 (Odero, J.) delivered on 28th April 2017 in HCCRA No. 57 of 2016)

RULING

1. By Notices of Motion dated 15th July 2024 and 16th October 2024, the applicant seeks to appeal out of time against the conviction and sentence of the Nakuru High Court in HCCRA No. 57 of 2016. The applicant was charged in Molo CM (SO) no. 852 of 2014 with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act*. The applicant was convicted and sentenced to life imprisonment. His appeal against that conviction and sentence was dismissed by Odero, J. on 28th April 2017 hence the application.
2. The application is supported by the grounds espoused in the application and his supporting affidavit sworn on 12th July 2024 which are summarized as follows: the sentence imposed on him was harsh and excessive against the weight of the evidence; his defence was not considered; the aspect of identification was not established to the required standard; and he was never furnished with the proceedings and the judgment.
3. The application was not opposed. In its written submissions dated 31st 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 lengthy.



4. 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 *Mwangi vs. Kenya Airways Ltd* (2003) KRL 486 that held as follows:

“Over the years, the Court has set out guidelines on what a single Judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance, in *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* (Civil Application No. Nai 255 of 1977) (unreported), the Court expressed itself thus:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled 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. Taking those principles into account, and having considered the application and the response thereto, I am persuaded to hold that the applicant has met the threshold set out in our jurisdiction. In the circumstances, the applications dated 15th July 2024 and 16th October 2024 are hereby 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

