



**Koech v Republic (Criminal Application E124 of 2024)  
[2024] KECA 1647 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1647 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E124 OF 2024  
PM GACHOKA, JA  
NOVEMBER 15, 2024**

**BETWEEN**

**WESLEY KIPNG'ENO KOECH ..... 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 Bomet (Korir, J.) delivered on 2nd August 2022 in HCCRA No. E004 of 2020)*

**RULING**

1. In his Notice of Motion dated 12<sup>th</sup> July 2024, the applicant seeks leave of this Court to appeal out of time against the conviction and sentence of the Bomet High Court in HCCRA No E004 of 2020. The applicant was charged in Bomet CM Criminal Case No 434 of 2010 with the offence of robbery with violence contrary to section 296 (2) of the Penal Code. The applicant was after a full trial convicted and sentenced to life imprisonment. His appeal against that conviction and sentence was dismissed by Korir, J. on 2<sup>nd</sup> August 2022 hence the present application.
2. The grounds supporting the Notice of Motion are captured in the applicant's supporting affidavit. He urged this Court to allow the application for the following reasons: the learned judge failed to consider his mitigating circumstances during the sentencing procedure; and the court failed to take into account that he had been in remand for eight months before his conviction. The applicant annexed his draft memorandum of appeal and notice of appeal to the application.
3. The application was canvassed by way of written submissions.  
However, as at the time of writing this ruling, I was not impressed with the respondent's submissions. The applicant's submissions dated 1<sup>st</sup> November 2024 urged that he was unable to obtain the proceedings and judgment in good time necessitating the filing of this application. He submitted



that the application was meritorious for meeting the criteria set out in rule 4 of the *Court of Appeal Rules 2022*. Furthermore, the application was couched on Articles 50 (2) (q) and 159 (2) (d) of the *Constitution*.

4. Rule 4 of the *Court of Appeal Rules 2022* grants this Court wide and unfettered discretion to extend time for the doing of an act limited by those Rules. The factors to consider were well ruminated by this Court in the case of *Fakir Mohammed v Joseph Mugambi & 2 others* [2005] eKLR where it was held that:

The exercise of this Court’s discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possible) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance-are all relevant but not exhaustive factor.”

5. I have considered the reasons advanced for the delay in filing the appeal. I am satisfied that the application has met the criteria set forth in our jurisdiction. Accordingly, the application dated 12<sup>th</sup> July 2024 is allowed. The applicant shall file his notice of appeal within 14 days from the date of this ruling. Thereafter, the record of appeal shall be filed and served within 30 days from the date of this order.

**DATED AND DELIVERED AT NAKURU THIS 15<sup>TH</sup> DAY OF NOVEMBER 2024.**

**M. GACHOKA C.Arb, FCI Arb.**

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**JUDGE OF APPEAL**

I certify that this is a True copy of the original

Signed

**DEPUTY REGISTRAR**

