



**Omwonga v Republic (Criminal Application E149 of 2024)
[2024] KECA 1639 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1639 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E149 OF 2024
PM GACHOKA, JA
NOVEMBER 15, 2024**

BETWEEN

PETER MAINA OMWONGA 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 Kericho (Ongeri, J.) delivered on 17th December 2020 in HCCRC No. 24 of 2017)

RULING

1. In his Notice of Motion dated 31st July 2024, the applicant seeks to appeal out of time against the conviction and sentence of the High Court sitting at Kericho in HCCRC No. 24 of 2017. The applicant was charged with the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. After full trial, the applicant was convicted and sentenced to life imprisonment on 17th December 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 undated supporting affidavit. He prayed that his application be allowed for the following reasons: the ingredients to the offence of manslaughter were not proved to the required standard; the sentence metered out was harsh and excessive; his defence was not considered; and he was not supplied with the judgment of the High Court in good time to enable him pursue the appeal. He annexed his notice of appeal and memorandum of appeal to the application.
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 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 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 vs. 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 annexures thereto, the respondent's submissions and the law. I am satisfied to hold that the application has met the threshold for the exercise of discretion by this Court. Consequently, the application dated 31st 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, FCI Arb.

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

