



**Wamithi v Republic (Criminal Application E150 of 2024)  
[2024] KECA 1638 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1638 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E150 OF 2024  
PM GACHOKA, JA  
NOVEMBER 15, 2024**

**BETWEEN**

**PAUL NGURE WAMITHI ..... 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 (Ngugi, J.) delivered on 28th June 2018 in HCCRA No. 271 of 2015))*

**RULING**

1. In his undated Notice of Motion, the applicant seeks leave of this Court to appeal out of time from the conviction and sentence of the High Court at Nakuru in HCCRA no 271 of 2015. The applicant was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the [Sexual Offences Act](#) in Nakuru CM (SO) case no 77 of 2011. He was found guilty and sentenced to life imprisonment at the trial court. His appeal against that conviction and sentence was dismissed by (Ngugi, J.) (as he then was) on 28<sup>th</sup> June 2018.
2. The application is supported by the grounds on the face of it and the supporting affidavit of the applicant. The applicant seeks leave to appeal out of time for the reason that the sentence meted out was contrary to several Articles of the Constitution. He added that he could not appeal in time because he was absent when judgment was delivered. Furthermore, he was not furnished with the proceedings at the High Court in good time to enable him file the appeal. The applicant annexed his notice of appeal together with the memorandum of appeal to the application.
3. In the written submissions dated 31<sup>st</sup> October 2024, Senior Assistant Director of Public Prosecutions Mr. Omutelema acting for the state did not oppose the application.



4. Rule 4 of the *Court of Appeal Rules 2022* gives this Court discretionary powers to extend time. This Court in *Karny Zabrya & another v Shalom Levi* [2018] eKLR stated the following as issues to be considered in an application under rule 4 of this Court's Rules:

Some of the considerations to be borne in mind while dealing with an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal; the need to protect a party's opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity. In taking into account the last consideration, it must be born in mind that it is not the role of a single judge to determine definitively the merits of the intended appeal. That is for the full Court if and when it is ultimately presented with the appeal."

5. I have considered the reasons advanced by the applicant as set out in the Motion, the supporting affidavit and the respondent's concession to the application. 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 undated application 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.

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

**M. GACHOKA C.Arb, FCIArb.**

.....  
**JUDGE OF APPEAL**

I certify that this is a True copy of the original

Signed

**DEPUTY REGISTRAR**

