



**Emojon v Republic (Criminal Application E186 of 2024)
[2024] KECA 1795 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1795 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E186 OF 2024
PM GACHOKA, JA
DECEMBER 6, 2024**

BETWEEN

PETER LOYAN EMOJON 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 (Meoli, J.) delivered on 27th May 2019 in HCCRA No. 39 of 2016)

RULING

1. In his Notice of Motion dated 28th August 2024, the applicant seeks the leave of this Court to appeal out of time against the conviction and sentence of the High Court sitting at Naivasha in HCCRA No. 39 of 2016. In Naivasha CM Criminal Case No. 15 of 2015, the applicant was charged with the offence of robbery with violence to section 295 as read with section 296 (2) of the *Penal Code*. The matter went for full trial where the applicant was convicted and sentenced to death. The applicant challenged those findings before the Naivasha High Court. In her judgment dated 27th May 2019, Meoli, J. found that the appeal against the conviction and sentence lacked merit and was dismissed.
2. The applicant is aggrieved with those findings. His application is supported by the grounds on the face of it, his affidavit sworn on 28th August 2024, his grounds of appeal, notice of appeal and memorandum of appeal. The applicant has urged this Court to allow the application on the ground that he was not furnished with the proceedings and judgment in good time to enable him file the appeal.
3. The application was not opposed. In its written submissions dated 14th November 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 heavy.



- 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 the Supreme Court in Agatha vs. Azad & 3 others [2022] KESC 1 (KLR).
- 5. I have considered the application, 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, 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.

DATED AND DELIVERED AT NAKURU THIS 6TH DAY OF DECEMBER 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

