



REPUBLIC OF KENYA



**Gacheru v Republic (Criminal Application E162 of 2024)  
[2024] KECA 1779 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1779 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E162 OF 2024  
PM GACHOKA, JA  
DECEMBER 6, 2024**

**BETWEEN**

**NATHANIEL KIMUNU GACHERU ..... 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 Nyahururu (Kariuki, J.) delivered on 26th April 2023 in HCCRC No. 17 of 2014)*

**RULING**

1. The applicant's undated application seeks to appeal out of time against the conviction and sentence of the High Court sitting at Nyahururu in HCCRC No 17 of 2014. The applicant was charged with the offence of murder contrary to section 202 as read with section 205 of the Penal Code. The applicant was subsequently convicted and sentenced to 35 years' imprisonment on 26<sup>th</sup> April 2023. 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 further annexed his notice of appeal and memorandum of appeal. He prayed that his application be allowed for the following reasons: the ingredients to the offence of murder were not proved to the required standard; the sentence meted out was harsh and excessive in violation of Articles 2 (4), 3 (1), 19 (2), 20 (1), 22 (1), 23 (1), 25 (c), 26 (1), 27 (1) and (4), 28, 50 (2) (p) & (q) and 159 of the Constitution and his relatives could not afford to obtain the services of legal counsel in good time.
3. The application was unopposed. In its written submissions dated 14<sup>th</sup> 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 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 v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR. We need not rehash those principles.
5. I have considered the reasons advanced, the respondent's submissions, the period that has lapsed since delivery of the impugned judgment 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 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 6<sup>TH</sup> DAY OF DECEMBER 2024.**

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

**JUDGE OF APPEAL**

I certify that this is a True copy of the original

Signed

Deputy Registrar

