



REPUBLIC OF KENYA



**KENYA LAW**  
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**Indakwa v Republic (Criminal Application E180 of 2024)  
[2024] KECA 1788 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1788 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E180 OF 2024  
PM GACHOKA, JA  
DECEMBER 6, 2024**

**BETWEEN**

**BENSON AMOYI INDAKWA ..... 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 (Mohochi, J.) delivered on 18th September 2023 in HCCRA No. E025 of 2022)*

**RULING**

1. In his undated application, the applicant seeks leave of this Court to appeal out of time from the conviction and sentence of the Nakuru High Court in HCCRA No. E025 of 2022. The applicant was charged in Nakuru CM (SO) Case No. 45 of 2020 with the offence of defilement contrary to section 8 (1) as read with section 8 (3) of the [Sexual Offences Act](#). The trial court, after a full trial, convicted him of the offence and sentenced him to life imprisonment. The appellant appealed against those findings before the Nakuru High Court. In his judgment dated 18<sup>th</sup> September 2023, Mohochi, J. found that the appellant's conviction was merited and resultantly upheld the conviction. He however set aside the judgment on sentence and substituted the same with a determinate sentence of 35 years' imprisonment.
2. The applicant is aggrieved with those findings. In support of his application, the applicant has attached his supporting affidavit, memorandum of appeal and notice of appeal. He urged this Court to allow his application for the reason that he was not supplied with a copy of the judgment in good time.
3. In the respondent's written submissions dated 14<sup>th</sup> November 2024, Senior Assistant Director of Public Prosecutions Mr. Omutelema acting for the state did not oppose the application. He urged this Court to take into account the fact that the sentence meted out against the applicant was lengthy.



4. The discretion set out in rule 4 of the *Court of Appeal Rules* 2022 is wide and discretionary. It is for this reason that in exercise of the same, a fact finder should not be guided by whims, caprice or sympathy. The guiding principles are not exhaustive.

However, the Court is urged to take into account the length of delay involved, the reasons for delay, possible prejudice on any party, the conduct of the parties, the need to balance competing interests, the need to protect a party’s opportunity to fully litigate his or her dispute, and the chances of succeeding. [See *Muringa Company Limited v Archdiocese of Nairobi Registered Trustees* [2020] eKLR.]

5. I have considered the reason advanced by the applicant, 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 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.**

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**JUDGE OF APPEAL**

I certify that this is a True copy of the original

Signed

**DEPUTY REGISTRAR**

