



**Kirui v Republic (Criminal Application E199 of 2024)
[2024] KECA 1785 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1785 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E199 OF 2024
PM GACHOKA, JA
DECEMBER 6, 2024**

BETWEEN

ISAAC KIRUI APPLICANT

AND

REPUBLIC RESPONDENT

(An application for leave to appeal out of time against the conviction and sentence of the High Court of Kenya at Narok (Bwonwonga, J.) delivered on 19th June 2019 and 9th October 2019 respectively in HCCRC No. 22 of 2017)

RULING

1. In his Summons by Chambers, the applicant seeks leave of this Court to appeal out of time against the conviction and sentence of the High Court at Naivasha in HCCRC No. 22 of 2017. The applicant was charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). The High Court (Bwonwonga, J.) convicted him of the offence on 19th June 2019 and sentenced him to 25 years' imprisonment on 9th October 2019.
2. The applicant is dissatisfied with those findings. He however failed to lodge his appeal in good time hence the present application. It is supported by the applicant's supporting affidavit, his memorandum of appeal and notice of appeal. The main ground raised by the applicant is that the sentence meted out was harsh and excessive. He urged this Court to grant the relief sought.
3. The state filed its written submissions dated 14th November 2024. Senior Assistant Director of Public Prosecutions Mr. Omutelema opposed the application. He submitted that the though the sentence meted out was lengthy, the applicant failed to explain the delay in filing the notice of appeal. The state thus urged this Court to dismiss the application.



4. The discretion set out in rule 4 of the Court of Appeal Rules 2022 is wide and unfettered. This Court in *Wasike v Swala* [1984] KLR 591 stated:

“As Rule 4 now provides that the Court may extend the time or such terms as it thinks just, an applicant must now show, in descending scale of importance, the following factors:

- a. That there is merit in his appeal.
- b. That the extension of time to institute and/or file the appeal will not cause undue prejudice to the respondent; and
- c. That the delay has not been inordinate.”

5. I have considered the reason advanced by the applicant, the respondent’s opposition, the applicant’s grounds in support of the appeal and the law. I find that the application has met the threshold donated by this Court in exercise of its jurisdiction. Consequently, I direct the applicant to file his notice of appeal within 14 days from today’s date. Thereafter, the record of appeal shall be filed within 30 days.

DATED AND DELIVERED AT NAKURU THIS 6TH DAY OF DECEMBER 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

