



**Koros v Republic (Criminal Application E207 of 2024)  
[2024] KECA 1782 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1782 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E207 OF 2024  
PM GACHOKA, JA  
DECEMBER 6, 2024**

**BETWEEN**

**VINCENT KIPKURUI KOROS ..... 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 Kericho (Ongeri, J.) delivered on 1st July 2022 in HCCRA No. E012 of 2022)*

**RULING**

1. By Notice of Motion dated 1<sup>st</sup> October 2024, the applicant seeks leave of this Court to appeal out of time against the conviction and sentence of the Kericho High Court in HCCRA No. E012 of 2022. The applicant was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the Sexual Offence Act in Kericho CM (SO) Case No. 29 of 2016. The trial court convicted him of the offence and sentenced him to life. The applicant appealed before the High Court where Ongeri, J. upheld the conviction and affirmed the sentence on 1<sup>st</sup> July 2022. The applicant then filed an application for revision of that sentence in Kericho High Court Criminal Misc. App. No. E061 of 2023 vide his Notice of Motion dated 24<sup>th</sup> July 2023. In its ruling dated 21<sup>st</sup> May 2024, Sergon, J. allowed his application. His sentence was set aside and substituted with a sentence of 30 years' imprisonment.
2. The applicant is aggrieved with the findings in Kericho HCCRA No. E012 of 2016 hence the present application. It is supported by his affidavit sworn on 1<sup>st</sup> October 2024, memorandum of appeal and notice of appeal. It is based on the following grounds: he was initially acquitted but the matter was reheard as the prosecution appealed against that acquittal; as a result, he suffered shock and mental anguish and was thus unable to file the present appeal in good time; he was unable to obtain the services of counsel as he was in prison; the delay is excusable; and the respondent stood to suffer no prejudice if the prayers sought in application were granted.



- 3. The state filed its written submissions dated 14<sup>th</sup> November 2024. Senior Assistant Director of Public Prosecutions Mr. Omutelema urged this Court to allow the application since the sentence meted out was lengthy.
- 4. The present application is hinged on the provisions of rule 4 of this Court’s rules which grants this Court powers to extend time for inter alia, appealing out of time. In *Fakir Mohammed vs. Joseph Mugambi and two others* [2005] eKLR, the Court set out this Court’s jurisdiction in determination of applications made under Rule 4. The discretion is unfettered. In its decision, the Court observed:

“The exercise of this Court’s discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance – are all relevant but not exhaustive factors.”
- 5. I have considered the reason advanced by the applicant, the respondent’s submissions, and the law. I have also taken due consideration of the proceedings and outcome in *Kericho High Court Criminal Misc. App. No. E061 of 2023*. At this stage, I will confine myself to the question of delay in filing the appeal. I note that the delay in filing the appeal is explained. Taking into account 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 the 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 6<sup>TH</sup> 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**

