



**Maritim v Republic (Criminal Application E183 of 2024)  
[2024] KECA 1796 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1796 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E183 OF 2024  
PM GACHOKA, JA  
DECEMBER 6, 2024**

**BETWEEN**

**DANIEL KIPKEMOI MARITIM ..... 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  
Kericho (Ongeri, J.) delivered on 16th February 2023 in HC)*

**RULING**

1. By Notice of Motion dated 16<sup>th</sup> August 2024, the applicant seeks leave of this Court to appeal out of time against the conviction and sentence of the Kericho High Court in HCCRC No. 17 of 2017. The applicant was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. Upon hearing the case, Ongeri, J. convicted the applicant and sentenced him to 30 years' imprisonment on 16<sup>th</sup> February 2023.
2. {}The applicant is aggrieved with those findings. He filed the present application supported by his undated affidavit, memorandum of appeal and notice of appeal to argue that his prayer for leave to appeal out of time was merited on account of the following reasons: the sentence meted out was harsh and excessive; his defence was not considered; the ingredients to the offence had not been established to the required standard; and he was not furnished with the proceedings and judgment in good time to enable him appeal on time.
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. In *Paul Wanjohi Mathenge vs. Duncan Gichane Mathenge* [2013] KECA 199 (KLR), this Court held as follows regarding the powers donated under rule 4 of this Court’s rules; the provision the application is hinged upon:

“The discretion under Rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration

of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance.”

5. {}I have considered the reason advanced by the applicant, the respondent’s submissions 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 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**

