



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Mbugua v Republic (Criminal Application E185 of 2024)  
[2024] KECA 1781 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1781 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E185 OF 2024  
PM GACHOKA, JA  
DECEMBER 6, 2024**

**BETWEEN**

**DANIEL NJOROGE MBUGUA ..... 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 Naivasha (Mwongo, J.) delivered on 27th May 2019 in HCCRC No. 55 of 2015)*

**RULING**

1. The applicant has invoked the provisions of rule 4 of the Court of Appeal Rules 2022 in his Notice of Motion. He seeks leave to appeal out of time against his conviction and sentence meted out by the Naivasha High Court in HCCRC No. 55 of 2015. The applicant was charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). In his judgment dated 27<sup>th</sup> May 2019, Mwongo, J. convicted the appellant for the offence that he was charged with and sentenced him to death.
2. The application is supported by the applicant's supporting affidavit dated 30<sup>th</sup> August 2024, grounds of appeal, memorandum of appeal and notice of appeal. He seeks leave to appeal out of time for the reason that he was never furnished with the proceedings and judgment in good time to enable him pursue an appeal.
3. In its written submissions dated 14<sup>th</sup> November 2024, the state, through Senior Assistant Director of Public Prosecutions Mr. Omutelema submitted that it did not oppose the application as the sentence meted out was heavy.



4. Under rule 4 of this *Court's Rules 2022*, discretion is given to extend time for the doing of any act provided for under the Rules. In *Henry Mukora Mwangi vs. Charles Gichina Mwangi* Civil Application No. Nai. 26 of 2004, this Court held:

“It has been stated time and again that in an application under rule 4 of the *Rules* the learned single Judge is called upon to exercise his discretion which discretion is unfettered. It may be appropriate to re-emphasize this principle by referring to the decision in *Mwangi v Kenya Airways Ltd.* [2003] KLR 486 in which this Court stated: “Over the years, the Court has, of course set out guidelines on what a single Judge should consider when dealing with an application for extension of time under rule 4 of the *Rules*. For instance, in *Leo Sila Mutiso -vs- Rose Hellen Wangari Mwangi* - Civil Application No. Nai. 255 of 1997 (unreported), the Court expressed itself thus:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: firstly, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”

5. I have considered the reasons advanced by the applicant as set out in the application, the supporting affidavit, the grounds of appeal, the memorandum of appeal and the notice of appeal. I have also considered the respondent's submissions and the law applicable. I am satisfied to hold that the application has met the threshold for the exercise of discretion by this Court. Consequently, the undated application is allowed as follows: 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**

