



REPUBLIC OF KENYA



**Ngasini v Republic (Criminal Application E200 of 2024)  
[2024] KECA 1794 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1794 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E200 OF 2024  
PM GACHOKA, JA  
DECEMBER 6, 2024**

**BETWEEN**

**STEPHEN MAUNDA NGASINI ..... 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 Nakuru (Wendoh & Emukule, JJ.) delivered on 10th May 2013 in HCCRA No. 382 of 2003)*

**RULING**

1. By Notice of Motion dated 27<sup>th</sup> September 2024, 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 382 of 2003. The applicant was charged in Nyahururu CM Criminal Case No 2635 of 2001 with the offence of robbery with violence contrary to section 296 (2) of the [Penal Code](#). After full trial, the applicant was convicted and sentenced to death. On appeal, the High court upheld the conviction but set aside the death sentence and substituted the same with life 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 following reasons: he was unable to obtain legal representation in good time due to financial constraints; he had been in prison for 23 years and had since been rehabilitated.
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. In an application of this nature, a Court is invited to exercise its discretion under rule 4 of this Court's rules. Discretion is exercised based on a well-trodden path and set out principles established



by the Supreme Court. See the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR. I need not rehash those principles.

5. I have considered the reason advanced by the applicant, the respondent's submissions and the law. The applicant has filed the present application 11 years after the judgment of the High Court was delivered. That delay is inordinate. However, I have taken into account the reasons preferred by the applicant in filing the present application. While the delay is inordinate, I am reluctantly inclined to allow the application on account of the reasons advanced. 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**

