



REPUBLIC OF KENYA



**KENYA LAW**  
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**NWO v Republic (Criminal Application E209 of 2024)  
[2024] KECA 1784 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1784 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E209 OF 2024  
PM GACHOKA, JA  
DECEMBER 6, 2024**

**BETWEEN**

**NWO ..... 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 (Emukule, J.) delivered on 18th September 2013 in HCCRA No. 138 of 2013)*

**RULING**

1. The applicant's Notice of Motion seeks the leave of this Court to appeal out of time against the conviction and sentence of the Nakuru High Court in HCCRA No. 138 of 2013. The applicant was in Naivasha CM Criminal Case No. 2363 of 2012 charged with the offence of incest contrary to section 20 (1) of the *Sexual Offences Act*. After full trial, the applicant was convicted of the offence and sentenced to life imprisonment. His first appeal against that conviction and sentence was dismissed by Emukule, J. on 18<sup>th</sup> September 2013 in HCCRA No. 138 of 2013.
2. The application is grounded by the reasons on the face of it and the applicant's supporting affidavit sworn on 2<sup>nd</sup> October 2024.  
  
The applicant seeks leave to appeal out of time for the reason that he fell ill upon conclusion of his appeal. As a consequence of the indisposition, he was unable to focus. He also advanced that efforts to obtain legal representation were an exercise in futility.
3. The application was not opposed. In its written submissions dated 14<sup>th</sup> November 2024, the state, through Senior Assistant Director of Public Prosecutions Mr. Omutelema submitted that while there was a delay in filing the application, the same ought to be allowed since the sentence meted out was lengthy.



4. Rule 4 of this Court’s rules provides that the Court may extend the time limited by these Rules for the doing of any act authorized or required by the Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended. This Court in the case of *Leo Sila Mutiso -vs- Rose Hellen Wangari Mwangi* Civil Application No. Nai. 255 of 1997 (unreported) expressed itself as follows:

“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: first, 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 application, the supporting affidavit, the respondent’s submissions and the law. The delay in filing this application is inordinate. I have considered the fact that the applicant who is in jail has deposed that he was unable to file the appeal as he fell sick. That assertion is not denied by the respondent and I will therefore give the benefit of the doubt in favor of the applicant. In the circumstances, I reluctantly find that the application has met the threshold for the exercise of discretion by this Court. 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, FCI Arb.**

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**JUDGE OF APPEAL**

I certify that this is a True copy of the original

Signed

**DEPUTY REGISTRAR**

