



REPUBLIC OF KENYA



KENYA LAW
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**Omoi v Republic (Criminal Application E201 of 2024)
[2024] KECA 1793 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1793 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E201 OF 2024
PM GACHOKA, JA
DECEMBER 6, 2024
[IN CHAMBERS]**

BETWEEN

JAMES KERABU OMOI 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 (Mshila, J.) delivered on 12th February 2015 in HCCRC No. 8 of 2011)

RULING

1. In his Notice of Motion dated 27th September 2024, the applicant seeks leave of this Court to appeal out of time from the conviction and sentence of the High Court at Nakuru in HCCRC No. 8 of 2011. The applicant was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The trial court (Mshila, J.) convicted him of the offence and sentenced accordingly.
2. The application is supported by the grounds on the face of it, the supporting affidavit of the applicant sworn on 27th September 2024, his memorandum of appeal and notice of appeal. The applicant seeks leave to appeal out of time for the reason that he is mentally challenged. He urged this court to take into account the provisions of section 333 (2) of the *Criminal Procedure Code* to compute the period spent in custody in his sentence.
3. In his written submissions and list of authorities dated 16th November 2024, the applicant submitted that it had met the criteria set out in rule 4 of this *Court's rules*. He prayed that the application be allowed. As at the time of writing this ruling, I had not been impressed with the submissions of the respondent.



4. Rule 4 of the *Court of Appeal Rules* 2022 gives this Court discretionary powers to extend time. This Court in *Karny Zabrya & another v Shalom Levi* [2018] eKLR stated the following as issues to be considered in an application under rule 4 of this *Court's Rules*:

“Some of the considerations to be borne in mind while dealing with an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal; the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity. In taking into account the last consideration, it must be born in mind that it is not the role of a single judge to determine definitively the merits of the intended appeal. That is for the full Court if and when it is ultimately presented with the appeal.”

5. I have considered the reasons advanced by the applicant as set out in the Motion, the supporting affidavit and his submissions. I have also considered the draft memorandum of appeal annexed to the application. 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. 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 6TH DAY OF DECEMBER 2024.

M. GACHOKA C.Arb, FCI Arb.

JUDGE OF APPEAL

I certify that this is a true copy of the original

signed

DEPUTY REGISTRAR

