



**ROTICH v Republic (Criminal Application E187 of 2024)
[2024] KECA 1787 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1787 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E187 OF 2024
PM GACHOKA, JA
DECEMBER 6, 2024**

BETWEEN

ROBERT KIPNG'ENO ROTICH 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 Kericho (Muya, J.) delivered on 21st November 2017 in HCCRA No. 3 of 2016)

RULING

1. The applicant was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (3) of the *Sexual Offences Act*. After full trial, the appellant was convicted of the offence and sentenced to 20 years' imprisonment. On appeal in HCCRA No. 3 of 2016, Muya, J. on 21st November 2017 upheld the conviction and affirmed the sentence. The applicant now seeks leave of this Court to appeal out of time against the conviction and sentence of the Kericho High Court in HCCRA No. 3 of 2016
2. The applicant is dissatisfied with the judgement of the first appellate court. He however failed to lodge his appeal in good time hence the present application. The application is supported by the applicant's supporting affidavit, his memorandum of appeal, notice of appeal and the grounds of appeal. The main ground set out by the applicant is that he was not supplied with the judgment in good time to enable him file his appeal in time.
3. The respondent filed its written submissions dated 14th 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. The discretion in rule 4 of the *Court of Appeal Rules 2022* is wide and unfettered. This Court in *Wasike vs. Swala* [1984] KLR 591 stated:

“As Rule 4 now provides that the Court may extend the time or such terms as it thinks just, an applicant must now show, in descending scale of importance, the following factors:

- a. That there is merit in his appeal.
- b. That the extension of time to institute and/or file the appeal will not cause undue prejudice to the respondent; and
- c. That the delay has not been inordinate.”

5. I have considered the reason advanced by the applicant, the respondent’s submissions and the law. I note that a period of seven years has lapsed since the impugned judgment was delivered. That delay is indeed inordinate. The applicant, who is in prison states that he was not supplied with the judgement and this contention is not disputed. Therefore, in the interest of justice and on account of the reason advanced by the applicant, coupled with the respondent’s concession, I am compelled to allow the application. Consequently, I direct the applicant to file his notice of appeal within 7 days from today’s date. Thereafter, the record of appeal shall be filed within 30 days.

DATED AND DELIVERED AT NAKURU THIS 6TH 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

