



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wanjiru v Republic (Criminal Application E163 of 2024)  
[2024] KECA 1780 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1780 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E163 OF 2024  
PM GACHOKA, JA  
DECEMBER 6, 2024  
[IN CHAMBERS]**

**BETWEEN**

**MOSES KAMAU WANJIRU ..... 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  
(Meoli J.) delivered on 15th March 2018 in HCCRC No. 3 of 2016)*

**RULING**

1. The application dated 12<sup>th</sup> August 2024 seeks leave of this Court to appeal out of time from the conviction and sentence of the Naivasha High Court in HCCRC No. 3 of 2016. The applicant was charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). He was found guilty and sentenced to death by (Meoli, J.) on 16<sup>th</sup> March 2018. That sentence was later commuted to life imprisonment by the President of the Republic of Kenya in 2023.
2. The applicant wants to appeal against the conviction and sentence meted out. He annexed his memorandum of appeal dated 12<sup>th</sup> August 2024 and notice of appeal. He urged this Court to allow his application for the following reasons: the ingredients to the offence of murder had not been proved beyond reasonable doubt; the applicant was convicted and sentenced improperly since the evidence was not adequately analyzed; the sentence of death was an infraction of his constitutional rights set out in Articles 50 (2) (p) and (q) of the [Constitution](#); and he was not furnished with a copy of the judgment in good time to enable him petition his appeal.



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 heavy.
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 and annexures supporting the application, the respondent’s concession to the application and the law. Although the delay is inordinate, I have taken into account the recent developments in jurisprudence regarding the death sentence, and I will allow the applicant to have his day in court. I am satisfied to hold that the application has met the threshold for the exercise of discretion by this Court.

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**

