



**Patience v Republic (Criminal Application E012 of 2021)
[2022] KECA 1238 (KLR) (4 November 2022) (Ruling)**

Neutral citation: [2022] KECA 1238 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CRIMINAL APPLICATION E012 OF 2021
S OLE KANTAI, JA
NOVEMBER 4, 2022**

BETWEEN

GACHECHE GOLD PATIENCE APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the Ruling of the High Court of Kenya at Nairobi
(Ogembo, J.) dated 24th June, 2021 in HC. CR. Appeal No. 159 & 196 of 2019)*

RULING

1. The applicant, Gacheche Gold Patience, was tried and convicted of the offence of trafficking in narcotic drugs contrary to section 4(a) of the *Narcotic Drugs and Psychotropic Substances (Control) Act* No. 4 of 1994 and a first appeal to the High Court of Kenya, Nairobi, was dismissed.
- 2.. In the Motion brought under section 349 *Criminal Procedure Code*, rule 4 of the *Court of Appeal Rules* and all other enabling provisions of law the applicant prays that he be granted leave to appeal out of time against “ the ruling issued in High Court Appeal Nos. 159/196 Gacheche Patience Gold & - versus- Republic. ” by Ogembo, J. on 24th June, 2021. In grounds in support of the application and in a supporting affidavit by the applicant it is said amongst other things that the applicant wants to appeal; he was granted leave to appeal but he did not do so because after applying for proceedings and Judgment the same were not availed to him until 25th June, 2021. He says that in those circumstances the issue was beyond his control as he could not appeal without having proceedings of the High Court and Judgment. He says that he has annexed a petition of appeal but I have not seen it.
3. Parties to the Motion were served by the registrar with a hearing notice on 4th October 2022 at 3.37 p.m. informing them of the hearing date and requiring them to file submissions. I have seen and considered the submissions filed for the applicant. None were filed by the respondent.



4. The principles that apply in an application for leave to extend time to file an appeal out of time were well summarized in the case of *Fakir Mohamed v Joseph Mugambi & 2 others*, Civil Application No. 332 of 2004 as follows:

“The exercise of this Court’s discretion under Rule 4 has followed a well- beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance – are all relevant but not exhaustive factors: See *Mutiso v Mwangi*, Civil Application No. NAI. 255 of 1997 (ur), *Mwangi v Kenya Airways Limited* [2003] KLR 496, *Major Joseph Mwereri Igweta v Murika Methare & Attorney General* Civil Application No. NAI 8 of 2000 (ur) and *Murai v Wainaina* (No. 4) 1982 KLR 38.”

5. I note that the applicant was convicted of a serious offence and that his first appeal was dismissed. Although he was granted 14 days to appeal the Judgment of the High Court he says that he applied for proceedings and Judgment of that court but the same were not supplied to him until 25th June, 2021. The motion before me is dated the same day that proceedings and Judgment are said to have been supplied so there is no question of delay. I cannot see any prejudice that would be suffered by the respondent or anybody else – the applicant has a right to appeal.

6. Having considered all those issues I am persuaded that the application is merited and I allow it. Let the applicant file notice of appeal within 7 (seven) days and record of appeal within 14 (fourteen) days thereafter. There will be no order on costs.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF NOVEMBER, 2022.

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

