



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gacheru v Republic (Criminal Application E158 of 2024)  
[2024] KECA 1797 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1797 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E158 OF 2024  
PM GACHOKA, JA  
DECEMBER 6, 2024**

**BETWEEN**

**JOHN KURIA GACHERU ..... 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 (Nzioka, J.) delivered on 27th January 2023 in HCCRA No. 28 of 2019)*

**RULING**

1. In his undated Notice of Motion, the applicant seeks leave of this Court to appeal out of time against the conviction and sentence of the High Court at Naivasha in HCCRA No. 28 of 2019. The applicant was charged with the offence of attempted murder contrary to section 202 of the Penal Code in Naivasha CMCCRC no. 169 of 2016. After a full trial, the court found that the applicant had committed the offence he was charged with. He was convicted and sentenced to 20 years' imprisonment. His first appeal against that conviction and sentence were upheld by the High Court (Nzioka, J.) in its judgment dated 27<sup>th</sup> January 2023.
2. The applicant is dissatisfied with those findings. He however failed to lodge his appeal in good time hence the present application. It is supported by the applicant's supporting affidavit, his memorandum of appeal and notice 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 invoke this Court's jurisdiction.
3. The state filed its written submissions dated 14<sup>th</sup> 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 set out 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 concession to the application, the applicant’s grounds in support of the appeal, the time that has lapsed and the law. The prosecution has conceded that the applicant, who is serving sentence in prison, was not supplied with the judgement. I find that the application has met the threshold donated by this Court in exercise of its jurisdiction. Consequently, I direct the applicant to file his notice of appeal within 14 days from today’s date. Thereafter, the record of appeal shall be filed 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**

