



**Shikokoti v Republic (Criminal Appeal E083 of 2024)  
[2024] KEHC 16219 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16219 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL APPEAL E083 OF 2024  
AC BETT, J  
DECEMBER 18, 2024**

**BETWEEN**

**SHIHEMI CHITAI SHIKOKOTI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for leave to file an appeal out of time from  
the Judgement of the High Court on 28th day of October 2016)*

**RULING**

1. The Applicant Shihemi Chitai Shikokoti was charged with the offence of defilement contrary to Section 88(1) as read with Section 8(2) of the [Sexual Offences Act](#) No. 3 of 2006. He was convicted and sentenced to life imprisonment. His appeal to this court vide Kakamega HCCR.A. No. 8 of 2009 was dismissed on a 26<sup>th</sup> October 2016.
2. By an undated Notice of Motion filed in court on 13<sup>th</sup> August 2024, the Applicant who is in person prays:-
  1. That this matter be certified as urgent and be heard at the first instance.
  2. That may the Honourable court be pleased to order that, this appeal out of time be given priority in determination.
  3. That I pray to be present during determination of this matter.
3. In addition to the Notice of Motion, the Applicant filed an undated Notice of Appeal.
4. The Applicant depones vide his undated Affidavit that the appellate Judge erred in law and in fact by upholding the Appellant's sentence but failed to find that his defence was not considered as required by law. He further avers that identification was not conclusively proved. The Applicant attributes his



failure to file appeal on time to lack of the records of appeal. He further prayed for a copy of the appellate court's proceedings and Judgement.

5. The Respondent did not file a response but objected to the application on the ground that the same ought to have been filed in the Court of Appeal.

6. Section 7 of the [Appellate Jurisdiction Act](#) grants jurisdiction to the High Court to extend time for lodging an appeal out and states as follows:-

“The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired:

Provided that in the case of a sentence of death no extension of time shall be granted after the issue of the warrant for the execution of that sentence.”

7. The application was filed more than 8 (eight) years after the impugned Judgement. The reason given to the delay, which is inordinate is insufficient. Despite the fact that the Applicant was in prison, he had the aid of prison officers who would have assisted him follow up the copy of proceedings and Judgement had he been diligent in his pursuit of his cause.

8. I have considered the application carefully. Although the delay is inordinate, the Applicant is acting in person. He has demonstrated a desire to appeal to the Court of Appeal. This will be a second appeal and will be on points of law. He has submitted that identification was not conclusively proved. This is a point of law.

9. Article 27 (1) of [the Constitution](#) guarantees every person the right to equal protection and equal benefit of the law. This right extends to those persons who are constrained by circumstances, from exercising their right of appeal within the stipulated timelines. The court is obligated by [the Constitution](#), to do justice to all parties regardless of status.

10. The right of appeal is grounded on Article 50(9) of [the Constitution](#). Rule 4 of the Court of Appeal Rules grants the court the discretion to extend time. This discretion is unfettered and needs only to be exercised in a judicious manner.

11. In the case of Andrew Kiplangat Chemaringo -v- Paul Kipkorir Kibet [2018] eKLR, the Supreme Court of Kenya held that:-

“...The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

12. The Applicant was sentenced to serve a life imprisonment. This is a heavy punishment. Although he did not attach a draft Memorandum of Appeal, the intended appeal appears to be arguable based on the grounds adduced in support of the application.

13. I am satisfied that based on the gravity of the sentence, the Applicant is deserving of this court's discretion to extend time.

14. I therefore allow the undated application for extension of time. The Applicant shall file his Notice of Appeal within the next fourteen (14) days. To facilitate the lodging of the Memorandum of Appeal,



the Deputy Registrar shall furnish the Applicant with typed copies of the proceedings and Judgement in the appeal file within twenty one (21) days. The Record of Appeal shall be filed and served within thirty (30) days from today.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 18<sup>TH</sup> DAY OF DECEMBER 2024.**

**A. C. BETT**

**JUDGE**

In the presence of:

The Appellant in person

Ms. Chala for Respondent

Court Assistant: Polycap

