



REPUBLIC OF KENYA



**Onganga v Republic (Miscellaneous Criminal Application  
E215 of 2024) [2024] KEHC 13682 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13682 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS CRIMINAL APPLICATION E215 OF 2024  
RE ABURILI, J  
NOVEMBER 7, 2024**

**BETWEEN**

**HENRY NGESA ONGANGA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in Winam Senior Principal  
Magistrate's Court Criminal Sexual Offences Case No. E037 of 2021)*

**RULING**

1. The applicant Henry Ngesa Onganga claims in his application dated 14<sup>th</sup> October 2024 seeks leave of court to file appeal out of time from Judgment and conviction in Winam SPM Sexual Offences Case No. E037 of 2021 on 1<sup>st</sup> September 2022 where he was sentenced to serve 20 years' imprisonment under Section 8(2) of the [Sexual Offences Act](#).
2. The section provides for mandatory life imprisonment upon conviction. The imposed sentence was below the statutory minimum.
3. There is no reason given in the affidavit which is not sworn for the inordinate delay.
4. This court is alive to the fact of some convicts who wait for a considerably long time to file appeals only for the appellate court to find that the lower court files are interfered with and even police files cannot be traced, all intended to defeat justice.
5. As there is no reason advanced for the inordinate delay from 1<sup>st</sup> September 2022 and as sentenced imposed is below mandatory minimum, I find no merit in the application dated 14<sup>th</sup> October 2024 which is hereby dismissed.
6. Signal to issue.



7. File closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2024**

**R. E. ABURILI**

**JUDGE**

