Ngaira v Respondent (Criminal Application E006 of 2025) [2025] KECA 1776 (KLR) (24 October 2025) (Ruling)

Neutral citation: [2025] KECA 1776 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT KISUMU

CRIMINAL APPLICATION E006 OF 2025

HA OMONDI, JA

OCTOBER 24, 2025

BETWEEN

BARNABAS NGAIRA ..... APPLICANT

AND

RESPONDENT ..... REPUBLIC

(Being an application for leave to extend time to file appeal against both conviction and sentence from the Judgment of the High Court of Kenya at Kakamega (Musyoka, J.) dated 1st August, 2023 in HCCRA No. E002 of 2022)

RULING

1. Barnabas Ngaira, the applicant herein, was tried, convicted and sentenced to 30 years' imprisonment for the offence of Defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act* No.3 of 2006 vide Criminal Case No. 64 of 2020 at Kakamega Law Court. Aggrieved with the decision, he filed HCCRA No. E002 of 2022 at Kakamega High Court, which was dismissed in its entirety. Once again, he was dissatisfied with the outcome and has tried to lodge his appeal several times through the High Court at Bungoma in vain with the latest being that he was directed to file an application to this Court

2. The respondent through learned prosecution counsel Ms. J. Busienei does not to oppose the application, pointing out that judgment having been delivered, the delay in being supplied with High court Judgment is not inordinate given the reasons adduced in the Supporting Affidavit.

3. This Court is allowed to exercise its unfettered discretion as provided under Rule 4 of the Court of Appeal Rules as follows:

> " The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act

authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended."

4. Rule 4 of the Court of Appeal Rules does not provide for factors the Court ought to consider in an application for extension of time but courts have devised appropriate principles to be applied in achieving a 'just' decision in the circumstances of each case. The case of Leo Sila Mutiso vs. Hellen Wangari Mwangi [1999] 2 EA 231 which is the locus classicus, laid down the parameters as follows:

> "It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted."

5. There is no maximum or minimum period of delay set out under the law, however, the reason or reasons for the delay must be reasonable and plausible. In support of this position, see Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR.

6. Rule 61 (1) of this Court's Rules provides that:

> " A person who desires to appeal to the Court shall give Notice of appeal in writing, which shall be lodged in six copies with the registrar of the superior Court at the place where the decision against which it is desired to appeal was given, within fourteen days after the date of that decision, and the notice of appeal shall institute the appeal"

7. I recognize that the notice of appeal ought to have been lodged within 14 days of the delivery of the decision which it seeks to appeal; that did not happen; nor has the applicant filed and served his record of appeal. I am however satisfied that the reasons already alluded to posed a challenge to the applicant to act in a timely manner; and indeed, the sentence the applicant is challenging is a long one which if his prayer is denied will occasion him great prejudice.

8. The upshot is that the application is merited and is allowed.

   The applicant is granted extension of time to file and serve the notice of appeal out of time within fourteen (14) days of today's date. The applicant shall file and serve the respondent with the record of appeal within thirty (30) days upon service of the Notice of Appeal.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF OCTOBER, 2025.

H. A. OMONDI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR