

**IN THE COURT OF APPEAL
AT KISUMU**

(CORAM: ASIKE-MAKHANDIA, JA (IN CHAMBERS))

CRIMINAL APPLICATION NO. E085 OF

2024 BETWEEN

GEORGE OMONDI OWAK.....APPLICANT

AND

REPUBLIC.....RESPONDENT

*(Being an application for extension of time to file appeal from the
Judgment of the High Court of Kenya at Siaya, (Aburili, J.,)
dated 6th January, 2022*

in

Original Criminal Case No. SO E001 of 2022)

RULING

[1] **George Omondi Owak**, the applicant herein, was tried, convicted and sentenced to life imprisonment for the offence of Defilement contrary to **Section 8(1)** as read with **Section 8(2)** of the Sexual Offences Act.

[2] Dissatisfied with the trial court's decision, the applicant filed an appeal in the High Court of Kenya at Siaya challenging both the conviction and sentence. However, the same was dismissed on 6th January, 2022, by Aburili J. Since then and though desirous of lodging a second appeal to this court, the applicant has been unable to do so for the reasons that it was not until recently that

he was able

to access the judgment of the first appellate court which was necessary for him to commence the appellate process. Secondly, he was also relying on his kin to instruct a lawyer on his behalf to conduct the appeal, but this never came to pass.

[3] It is for all these reasons that the applicant has taken out this motion on notice seeking for extension of time within which to lodge and serve the Notice of appeal as well as the record of appeal. I note that though the respondent was served with the application, it has to date not filed any papers in opposition to the application. Similarly, much as the respondent was served with the hearing notice for today of the application, it has not filed any papers either opposing or supporting the application. I would therefore take it that the application is unopposed.

[4] It is trite that an appeal ought to be entered within fourteen days of the date of the judgment or sentence appealed against and in the event of failure, the court to which the appeal is made may for good cause admit an appeal after the period of fourteen days has elapsed, and shall so admit an appeal if it is satisfied as to the reasons for the delay.

[5] I have carefully considered the application, the grounds in support thereof and the supporting affidavit, and this is my take!

Rule 4 of the Court of Appeal Rules 2022 provides that this Court may, on such terms as may be 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.

[6] In the case of **Wanyoike Kariuki vs Republic COA CRAPPL E060 of 2024**, Relying on the dicta in **Andrew Kiplagat Chemaringo V.**

Paul Kipkorir Kibet [2018] e KLR where it was opined that;

“...the law does not set out any minimum or maximum period of delay. All it states is that the delay should be satisfactorily explained, A plausible and satisfactory explanation for the 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.”

[7] See also the Court's Ruling in **Sila Mutiso vs Helen Wangari, (NRB) Civil Application No. 251 of 1997**, where the court opined that;

“...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.”

[8]The applicant duly admits that it has taken long for him to lodge the intended appeal however due to the aforementioned reasons the applicant was not in a position to appeal on time.

[9]There being no counter to the assertions by the applicant by the respondent, I am satisfied that, that the applicant has precisely demonstrated his reasons for the delay in filing the intended appeal in time. Further, I find that no prejudice will be suffered by the respondent in the event that the application is granted. I am also aware that the applicant is serving a lengthy sentence and it is only fair and in the interest of justice that he be allowed to exhaust the appellate process.

[10]I accordingly allow the application and direct that the applicant files his intended appeal within the next **forty -five (45)** days from the date of this ruling.

Dated and delivered at Kakamega this 30th day of October, 2025.

ASIKE-MAKHANDIA
.....
..... **JUDGE OF**
APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR