



REPUBLIC OF KENYA



KENYA LAW
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**Nyasundi v Republic (Criminal Application E002 of 2025)
[2025] KECA 1788 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1788 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E002 OF 2025
HA OMONDI, JA
OCTOBER 24, 2025**

BETWEEN

JACOB OTIENO NYASUNDI APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application seeking for leave to appeal out of time against conviction and judgment of the High Court of Kenya at Siaya (Aburili, J.) dated 26th July 2017 in HCCRA No. 70 of 2017)

RULING

1. The applicant, Jacob Otieno Nyasundi, was charged of the offence of defilement contrary to section 8(1) as read with 8(3) of the [Sexual Offences Act](#), No. 3 of 2006 for. He was tried, convicted and sentenced to serve 30 years imprisonment by the magistrate's court. Aggrieved, he moved to the High Court on appeal vide HCCRA No.70 of 2017 which was dismissed in entirety (Aburuli, J.) on 26th day of July 2017. He however failed to file his appeal within the 14 days after delivery of judgment; but remains desirous of appealing to this Court.
2. In that regard, the applicant filed this application dated 6th January 2025 seeking leave for extension of time to file appeal out of time. The application is premised on the grounds that the applicant was not served with the proceedings and Judgment of the High Court on time, to enable him prepare and file his appeal
3. The respondent, through learned prosecution counsel Ms Munyolo Omusebe-Oduor, acknowledges that the delay is inordinate, but argues that the appeal is arguable with overwhelming chances of success; and that the Respondent will suffer no prejudice. Further; that their legitimate notice of appeal on record lodged and served upon the respondent within a reasonable time, yet, that the applicant intends to challenge the High Court's upholding of a conviction and sentence of 30 years imprisonment; and on this ground alone, it is conceded that the appeal is not frivolous considering



that he has been sentenced to a very long period, yet delay in obtaining records was caused by the High Court's slow process Judgment. This Court is thus urged to exercise its discretion favourably and grant the application for extension of time.

4. }I have considered the application, the grounds in support thereof, submissions filed and bearing in mind that in an application of this nature, the court is allowed to exercise its discretion. The issue for determination is whether the applicant is deserving of the orders sought. The Court's unfettered discretion is 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.

5. 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.”

6. In *Muringa Company Ltd vs. Archdiocese of Nairobi Registered Trustees*, Civil Application No.190 of 2019 observed that:

“Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party's opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.”

7. How long was the delay in this instance? 4 years (four). What was the reason? The applicant is a lay person incarcerated; and did not have the advantage of easily reaching the courts to establish the status of his appeal. 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. For instance, in *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR, this Court stated:

}“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.”

Under Rule 61 (1):



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.

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 persuaded that the reason already alluded to posed a challenge to the applicant to act in a timely manner; and also, as pointed out by the respondent, the sentence the applicant is challenging is a long one which if his prayer is denied will occasion him great prejudice.

8. Ultimately, I find 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

