



**Wata v Republic (Criminal Application E097 of 2024)
[2025] KECA 1745 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1745 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E097 OF 2024
MSA MAKHANDIA, JA
OCTOBER 15, 2025**

BETWEEN

LUCAS OGUTU WATA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an Application for extension of time from the Judgment of the High Court of Kenya at Siaya, (Aburili, J.) dated 27th April, 2022 in HCCRA No. 027 of 2022)

RULING

1. Lucas Ogutu Wata, “the applicant” herein was charged, tried, convicted, and sentenced to life imprisonment by the Senior Principal Magistrate’s Court at Bondo for the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*.
2. Being dissatisfied with both the conviction and sentence, the applicant lodged an appeal in the High Court of Kenya at Siaya. Upon hearing, the High Court (Aburili J.) reaffirmed the trial court’s findings and accordingly dismissed the first appeal in its entirety.
He is desirous to exercise his undoubted constitutional right of a second appeal but is unable to do as he has been got up with the prescribed statutory timeframes of this Court.
3. The applicant has now moved this Court by way of his motion on notice dated 26th June 2024, in which he does not cite the relevant rule of this Court under which it is grounded upon. However, from the body of the application, the grounds in support thereof and the supporting affidavit, I discern that the application is brought under Rule 4 of the Court of Appeal Rules, 2022, and will proceed to treat it as such.



4. In the main, the applicant seeks leave of this Court to lodge an appeal out of time. The power of this Court to extend time for filing an appeal is provided for under Rule 4 of the Court of Appeal Rules, 2022, thus:

“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. The principles guiding the exercise of this discretion were articulated in *Harrison Kariuki Njuguna v Republic* [2020] eKLR and *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR. Essentially it is that the decision whether or not to extend time for appealing is discretionary. In general, the matters which the Court takes into account in deciding whether or not to grant an extension of time are; the length of the delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, and the likely prejudice to the parties either way.
6. The applicant avers that his first appeal was dismissed on 27th April 2022. Being a layperson and unrepresented at the time of judgment, he faced logistical and financial challenges in the preparation of an appeal. He had expected that his family to chip in and hire a counsel to assist him in the process but this never came to pass.
7. The delay was therefore neither deliberate nor inordinate, but occasioned by genuine circumstances beyond his control which has sufficiently been explained and excusable under the circumstances. That if this Court was to decline to extend time, the applicant will be permanently deprived of his constitutional right to appeal against conviction and sentence, thereby suffering grave injustice.
8. I note that though the respondent was served with the application in good time, to date it has not filed any papers in opposition to the application. I will take it therefore that the application is unopposed.
9. To my mind, the applicant has demonstrated reasonable cause for the delay in filing the appeal. He acted with diligence once circumstances permitted and stands to suffer irreparable prejudice if denied an opportunity to challenge his conviction and sentence. Conversely, no prejudice will be suffered by the respondent should the application be allowed, as it will have the opportunity to respond fully to the appeal on its merits.
10. I also appreciate that Article 25(c) of *the Constitution* of Kenya declares the right to a fair trial as non-derogable right. The right to appeal forms part of the fair trial guarantees and must therefore be protected. Similarly, Article 48 of the same Constitution obliges the State to ensure access to justice for all persons, while Article 159(2)(d) requires courts to administer justice without undue regard to procedural technicalities.
11. The African Charter on Human and Peoples’ Rights (Article 7) and the International Covenant on Civil and Political Rights (Article 14(5)), to which Kenya is a signatory, both affirm the right of a convicted person to have their conviction and sentence reviewed by a higher tribunal.
12. Guided by the foregoing and principles of justice, equity, and fairness, I am inclined to exercise my unfettered discretion in favour of the applicant and grant him the leave sought having demonstrated reasonable cause for the delay in filing the appeal; acted with diligence once circumstances permitted and stands to suffer irreparable prejudice if denied an opportunity to challenge his conviction and sentence.



13. Accordingly, leave is hereby to the applicant to file and serve the Notice and Record of Appeal out of time. He should do so within the next forty-five (45) days.

DATED AND DELIVERED AT KISUMU THIS 15TH DAY OF OCTOBER, 2025.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

