

**IN THE COURT OF  
APPEAL AT KISUMU**

**(CORAM: OMONDI, JA, (IN CHAMBERS))**

**CRIMINAL APPLICATION NO. E025 OF**

**2025 BETWEEN**

**LEONARD OTIENO OMULLO.....APPLICANT**

**AND**

**REPUBLIC.....RESPONDENT**

*(Being an application for leave to file an appeal out of time arising from judgment of the High Court of Kenya at Siaya (Aburili, J.) dated 24<sup>th</sup> January 2022*

*in*

**HCCRA No. E019 of  
2021)**

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**RULING**

1. Leonard Otieno Omullo, the applicant herein, was charged in the Resident Magistrate's Court at Bondo with the offence of defilement contrary to Section 8(1)(2) of the Sexual Offences Act No. 3 of 2006. He was tried and convicted in Criminal Case No. 54 of 2020, and sentenced to life imprisonment on 16<sup>th</sup> July 2021.
2. Aggrieved by the conviction and sentence, the applicant lodged Criminal Appeal No. E019 of 2021 at the High Court in Siaya. The appeal was dismissed on 24<sup>th</sup> January 2022

(Aburili, J); and being dissatisfied with the outcome, he ought to have filed his appeal within 14 days of the decision. However, he states that due to procedural technicalities and lack of legal representation, he did not file his second appeal within the prescribed time. The applicant, now incarcerated, has sought legal advice from prison paralegals and filed the present Notice of Motion dated 4<sup>th</sup> March 2025, seeking leave to file his second appeal out of time. He states that the appeal has high chances of succeeding; and the respondent will suffer no prejudice should the application be allowed.

3. There is no response filed by the respondent either by way of affidavit or submissions.
4. The issue for determination is whether the applicant is deserving of the orders sought. Section 349 of the Criminal Procedure Code provides that an appeal to this Court should be filed within fourteen days, but allows for extension of time where sufficient cause is shown. 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 discretion that I am required to exercise in the

determination of this application

is unfettered and 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. The applicant submits that the delay in filing the second

appeal was occasioned by circumstances beyond his control,

as being a lay person and incarcerated, he lacked the requisite legal knowledge and resources to navigate the appellate process; that he was unaware of the strict timelines and was not accorded legal aid to pursue the second appeal within time. He reiterates that upon receiving advice from prison paralegals, he acted promptly and filed the present application, demonstrating diligence and genuine desire to pursue his constitutional right to appeal.

7. The applicant also believes that his appeal raises substantial questions of law, including but not limited to:

***a) Whether the Appellate Court properly re-evaluated the evidence and applied the correct legal standards.***

***b) Whether the sentence imposed was proportionate and just in the circumstances.***

***c) Whether his constitutional rights were upheld during trial and appeal.***

The applicant further contends that the delay is neither inordinate nor deliberate, and no prejudice will be occasioned to the respondent.

8. Undoubtedly 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, so if his prayer is denied, it will occasion him great prejudice.

9. I am satisfied that the reasons 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.

10. 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 30<sup>th</sup> day of January, 2026.**

**H. A. OMONDI**

.....  
**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**