

**IN THE COURT OF
APPEAL AT KISUMU**

(CORAM: OMONDI, JA (IN CHAMBERS))

CRIMINAL APPLICATION No. E039 OF

2025 BETWEEN

SAMSON ONYANGO OCHIENG.....APPLICANT

AND

REPUBLIC.....RESPONDENT

*(Being an application for leave to file appeal out of time
against the conviction and sentence against the High Court
of Kenya at Siaya (Aburili, J.) dated 24th March 2021*

in
HCCRA No. 44 of 2019)

***** RULING**

1. Samson Onyango Ochieng, the applicant was charged with the offence INCEST contrary to section 20(1) of the Sexual Offences Act No. 3 of 2006 and convicted to life sentence in by the magistrate's court in Ukwala Chief Magistrate Criminal Case No.34 of 2019. He challenged the decision both on conviction and sentence in Siaya HCCRA No. 44 of 2019, which was also dismissed in its entirety.
2. The applicant was aggrieved by this further outcome and intended to file an appeal, and relied on his relatives to hire

an

advocate but this came to nought leading to the delay in filing the appeal. This was further compounded by the fact that the applicant did not apply on time to be supplied with copies of the proceedings and judgement and the proceedings on time to enable him pursue the appeal.

3. Now realizing that he has run out of time within which to file appeal, he has filed the Notice of Motion dated 5th June 2025 supported by his own affidavit, seeking for an extension of time to file his appeal out of time.
4. There is no response or written submissions filed by the respondent.
5. Under Rule 61 (1) of this Court's Rules:

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.

6. Clearly the applicant ought to have filed the notice of appeal within 14 days of the delivery of the decision which he seeks to appeal, but that did not happen; nor has the applicant filed and served his record of appeal. Civil This court is allowed to

exercise its unfettered discretion as provided under rule 4 of the Court of Appeal Rules which provides 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.

7. 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."

8. The Court in **Muringa Company Ltd vs. Archdiocese of Nairobi Registered Trustees Application No.190 of 2019 [2020] eKLR** 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.”

9. 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. ***[See for instance, Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR]***. In this instance the delay has been for a period of 10 years; and whereas that is a long time by any measure, I recognise that the applicant is a lay person who is incarcerated; did not have the advantage of easily reaching the courts to establish the status of his record of appeal. Taking into consideration the nature of sentence he has been consigned to, I am persuaded that justice will be served by allowing him a chance to make his bid to freedom. I am 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.

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 13th day of February, 2026.

H. A. OMONDI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR