

**IN THE COURT OF
APPEAL AT KISUMU**

(CORAM: OMONDI, JA (IN CHAMBERS))

CRIMINAL APPLICATION NO. E004 OF 2026

BETWEEN

JONES ARASA OKERO.....APPLICANT

AND

REPUBLIC.....RESPONDENT

*(Being an application for leave to appeal out of time
against the judgment of the High Court at Nyamira
(Okwany, J.) dated 27th May, 2021*

in

**HCCRA No. E008 of
2024)**

RULING

1. Jones Arasa Okero, the applicant was convicted and sentenced to life imprisonment by the Magistrate's Court at Keroka, for the offence of defilement contrary to section 8(1)(2) of the Sexual Offences Act No.3 of 2006 in the Magistrate's Court at Kisii. He appealed against the decision in Nyamira HCCRA No. E008 of 2024 (Okwany, J.). The appeal on conviction was dismissed, but the life sentence substituted with 40 years imprisonment. Although he was aggrieved by the outcome, he got confused and

traumatized and failed to file

the appeal on time; he did not have an advocate to
make

follow-up to Court of Appeal in this case, in order to help him file a Notice of appeal. He further states that the delay was also marred by his poor family background rendering it difficult to engage an advocate to follow up the appeal; and the delay was not intentional.

2. By a Notice of Motion dated 14th January 2026, the applicant seeks to be granted extension of time to enable him file a Notice of Appeal though out of time. He also believes that his appeal has overwhelming chances of success if only it can be heard and determined.
3. Learned Principal Prosecution Counsel, Mr. Mwangi on behalf of the respondent points out that the power explained to the satisfaction of the court; and that in considering whether to extend time, the Court is obliged to also consider whether the intended appeal is arguable and has chances of success, hence not frivolous.
4. While contending that there has been inordinate delay in the period within which the appeal ought to have been filed, counsel nonetheless acknowledges that the applicant is incarcerated, representing himself and given the nature of the sentence being served, and more importantly given the nature of the sentence being served, to wit, imprisonment

for conviction of

defilement, the respondent does not oppose the application for extension of time.

5. In this matter, the decision sought to be appealed was delivered in 2024, which is about 2 years, prior to filing this application. Is there any reason to warrant the Court's favourable discretion? 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.

6. 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."

7. Some of the considerations to be taken into account 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; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity. See ***Muringa Company Ltd vs. Archdiocese of Nairobi Registered Trustees Civil Application No.190 of 2019 [2020] eKLR.***
8. The delay in this instance is 2 years (two); and the reason is that the applicant a lay person is incarcerated; and did not have the advantage of easily reaching the courts to obtain his records of appeal and the emotional trauma that left him reeling. Indeed, 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 the case of ***Andrew Kiplagat***

Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR.

9. 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.

Certainly, the appeal ought to have been lodged within 14 days of the delivery of the decision which it seeks to appeal; that did not happen. I am however satisfied that the reasons already alluded to posed a challenge to the applicant to act in a timely manner, and no prejudice will be caused to the respondent, who has in any event conceded the application.

11. 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

.....
JUDGE OF APPEAL

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

DEPUTY REGISTRAR