

**IN THE COURT OF
APPEAL AT KISUMU**

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

MISC. CRIMINAL APPLICATION NO. E042 OF 2025

BETWEEN

ALFRED DISMAS OCHANGO.....APPLICANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal against the Judgment of the High Court of Kenya at Kakamega (Majanja, J.) dated 2nd September, 2019

in

HCCRA No. 46 of 2018)

RULING

1. The applicant Alfred Dismas Ochango, was charged with the offence of defilement contrary to section 8[1] as read with section 8[2] of the Sexual Offences Act No.3 of 2006 in Butere Chief Magistrates Court Criminal Case No. 109 of 2016; and upon trial, he was convicted for the offence and sentenced to life imprisonment. Aggrieved by the outcome, he challenged the decision in Kakamega HCCRA No. 46 of 2018 where his appeal was heard and dismissed on 2nd

September,2019. The

applicant ought to have lodged his appeal within 14 days from the date that the judgment was delivered, however failed to file his appeal, much as he was aggrieved by the outcome.

2. He explains he had relied on his relatives who had promised to hire a lawyer for him, but it turned out that they could not do so due to financial constraints. As a result, he failed to file his appeal on time, but he still desires to appeal; which has now prompted him to file a notice of motion dated 23rd June 2025, supported by his affidavit of even date, seeking leave to be allowed to file his appeal filed 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. explains that the delay in filing his appeal was as a result of not being supplied with the record of appeal on time; which has now prompted him to file the present application. He also alludes to the fact that he was not supplied with the record of appeal on time as being a contribution to the delay.
3. The respondent through N. Mwaniki, learned prosecution counsel, does not oppose the application acknowledging that that the delay in filing the Notice of Appeal is not

inordinate given the reasons adduced in the Supporting Affidavit.

4. The issue for determination is whether the applicant is deserving of the orders sought. The discretion that I am called to exercise in the determination of this application is unfettered and is 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.

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 [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.”

7. I recognize that 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 which if his prayer is denied will occasion him great prejudice.

8. 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 March, 2026.

H. A. OMONDI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR