



REPUBLIC OF KENYA



**Siendei v Republic (Criminal Application E042 of 2025)
[2026] KECA 839 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KECA 839 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CRIMINAL APPLICATION E042 OF 2025**

JO OKELLO, JA

APRIL 30, 2026

BETWEEN

TOBIKO SIENDEI APPLICANT

AND

REPUBLIC RESPONDENT

(An application for extension of time to file an appeal out of time against the conviction and sentence of the High Court of Kenya at Nairobi (M. Mbogholi, J.) delivered on 3rd April, 2014 in HC.CR.A. No. 642 of 2010)

RULING

1. By a Notice of Motion dated 22nd June, 2025, the applicant applied for leave to file the Notice and Memorandum of Appeal out of time against the judgment delivered on 3rd April, 2024 in Nairobi High Court Criminal Appeal No. 642 of 2010.
2. The matter came up for hearing by way of written submissions on 20th April, 2026. However, there were no written submissions filed by both parties. There was proper service effected on 13th April, 2026.
3. The applicant's case is premised on the grounds stated on the face of the application and the supporting affidavit of the applicant herein. The respondent did not file any response to the application.
4. The was charged with the offence of defilement contrary to section 8(1) as read with section 8(2) of the [Sexual Offences Act](#), 2006 and was sentenced to life imprisonment.
5. In his application and supporting affidavit, the applicant avers that he be allowed to file the appeal out of time as he had expressed his intention to appeal in 2018 by filing an appeal in Nairobi but he was not given an appeal number. He further contends that he filed his submissions after case management in 2018 but he never got feedback from the Court of Appeal. He has deposed the same grounds in his supporting affidavit and further prays that being a pauper, he be exempted from any court fee that may



apply in this application. The applicant has attached a draft notice of appeal, draft memorandum of appeal and the judgment from the trial court and the High Court. The applicant is therefore seeking for extension of time on a second appeal.

6. The applicant deposed that since he had expressed his intention to appeal, he be granted leave to file his appeal out of time.
7. The application is not opposed by the respondent.
8. Rule 4 of the Court of Appeal Rules provides:

“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 construed as a reference to that time as extended.”

9. Under Rule 4 of the Court of Appeal Rules, 2022, an extension of time is a discretionary power grantable on well settled principles. In *Leo Sila Mutiso vs Rose Hellen Wangari Mwangi* [1991] eKLR, the Court set out the principles to include the length of the delay, the reason for the delay, the chances of the appeal succeeding, the degree of prejudice to the respondent, and the conduct of the parties. The principles that guide this Court in determining whether to extend time pursuant to Rule 4 of the Rules of this Court were rehashed in *Mwangi vs Kenya Airways* [2003] KLR 486 at page 489 the Court stated thus:

“Over the years, the Court has set out guidelines on what a single judge should consider when dealing with an application for extension of time under Rule 4. For instance, in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi*, (Civil Application No. Nai. 255 of 1997, the Court expressed itself thus: It is now well settled that the decision whether to extend the time 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 appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

10. The principles enunciated are the principles I proceed to apply in the instant case in determining whether the prayers sought by the applicant in the notice of motion dated 22nd June, 2025 should be granted. The applicants’ prayers are that the Honourable Court extend time and grant leave to allow the applicants file notice of appeal and the memorandum of appeal out of time against the judgment dated 4th April, 2014 in Nairobi HCCRA No. 642 of 2010, and that the notice of appeal be deemed as duly filed and further that the applicant be allowed to file the memorandum of appeal out of time. The applicants further pray that the cost of this application be in the cause.
11. Having considered the application, the supporting affidavit, the law, this Court is now called upon to determine whether the application meets the threshold for enlargement of time.
12. The first issue of consideration is the length of delay. From the records, the judgment in issue was delivered on 4th April, 2014, where upon the applicant had 14 days within which to file the notice of appeal i.e., 17th April, 2024. The applicant alleges that he filed an appeal and further submitted his submissions after case management but this is not indicated as to when it was done. The length of delay is considered on a case-by-case basis. In *Muya vs Tribunal Appointed to Investigate the Conduct of Justice Martin Mati Muya, Judge of the High Court of Kenya* (Petition 4 of 2020) [2022] KESC 37



(KLR) was held that “where there is delay, the Court must interrogate whether the same is justifiable and thus excusable, or not. In order to do that, the Court must interrogate the circumstances of the case.”

13. Noting that the notice of appeal ought to have been filed on or before 17th April, 2024 and that the application for leave to file an appeal out of time has been filed 395 days after the said date, and further that no satisfactory explanation and justification has been given, I find that the delay is inordinate and undeserving of this Court’s discretion to extend the time.
14. Therefore, having considered the application, the supporting affidavit and the law, Rule 61(1) of the Court of Appeal Rules, 2022 provides that a person who desires to appeal to the Court shall give notice 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. The judgment the subject of appeal was delivered on 4th April, 2014 while the instant application is dated 22nd June, 2026, which is 365 days after the delivery of the High Court judgment. The Court cannot countenance the applicant’s indolent.
15. On the reason for delay, the applicant, deposed in his supporting affidavit sworn and filed on 3rd March, 2025 that the delay in filing the notice and record of appeal was attributed to the fact that he had an appeal at Nairobi Court of Appeal but was not given the appeal number. He further avers that he filed his appeal submissions after case management in the year 2018 but since then he had not heard from the Court.
16. He concludes in his affidavit by stating that he is a pauper hence applying that he be exempted from any court fee that might apply in this application. He closes his averment by praying for leave to file appeal out of time due to his earlier intention to appeal. This prayer has been granted and that is why this matter is before this Court.
17. On whether there are chances of success, I have to consider whether there is a single arguable ground that has been raised by the applicant. This being a second appeal, this Court is restricted to matters of law. Be that as it may, I have had the occasion to revisit the judgments of the trial court and the superior court in the first appeal and I’m persuaded that this appeal is not arguable.
18. Finally, on the degree of prejudice, the applicant is praying for leave to appeal against conviction and sentence on the offence of defilement contrary to Section 8(1) of the *Sexual Offences Act*, 2006. The offence was committed on 23rd April, 2006, that is twenty years ago. Litigation has to come to an end and resurrecting this matter is definitely prejudicial to the victim and the public at large.
19. The upshot of this is that the applicant has not persuaded this Court that his application is deserving. This Court therefore, finds no merit in the notice of motion dated 22nd June, 2025.
20. Consequently, for the reasons stated, the Notice of Motion dated 22nd June, 2025 is dismissed.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF APRIL, 2026.

DR. J. O. OKELLO

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JUDGE OF APPEAL

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

Signed



DEPUTY REGISTRAR.

