



REPUBLIC OF KENYA



KENYA LAW
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**Ongera v Republic (Criminal Application E210 of 2024)
[2025] KECA 424 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KECA 424 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E210 OF 2024
MA WARSAME, JA
FEBRUARY 28, 2025**

BETWEEN

JUSTIN MACHUMA ONGERA APPLICANT

AND

REPUBLIC RESPONDENT

(An application for extension of time to file an appeal against the ruling of the High Court at Naivasha (Ngenye, J.) dated 7th August, 2022 in HCCR Application No. 18 OF 2019)

RULING

1. Before me is an undated application seeking leave to appeal out of time against the judgment of the High Court issued in HCCRA No. 18 of 2019 and delivered on 7th August 2022, upholding the applicant's conviction on defilement contrary to Section 8(1) as read with Section 8(3) of the [Sexual Offences Act](#) and sentence of 20 years.
2. The reason for delay as explained on the face of the application and the applicant's supporting affidavit is that his family, whom he was dependent on, promised to hire an Advocate but they faced financial constraints and were unable to do so.
3. As was stated in [Fakir Mohamed v Joseph Mugambi & Two Others](#), Civil application No. Nai. 332/04 (unreported) on the discretion of this Court in a Rule 4 application:

“As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted; the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits; the resources of the parties, whether the matter raises issues of public importance are all relevant but not exhaustively factors.”



4. Considering that the delay in bringing the instant application is about 2 years, I do not find the applicant's explanation sufficient. There is no requirement for a convicted person to expend funds to file a notice of appeal or a requirement that an Advocate to be the one to file it.
5. I accordingly find the delay inordinate and the application devoid of merit, and dismiss the same

DATED AND DELIVERED AT NAKURU THIS 28TH DAY OF FEBRUARY, 2025.

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

Signed

DEPUTY REGISTRAR

M.WARSAME

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

