



REPUBLIC OF KENYA



KENYA LAW
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**Hatiba v Republic (Criminal Application E249 of 2024)
[2025] KECA 391 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KECA 391 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E249 OF 2024
JM MATIVO, JA
FEBRUARY 27, 2025**

BETWEEN

HANDAUKA ALI HATIBA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to file an appeal out of time from the Judgment of the High Court of Kenya at Naivasha (C. Meoli, J.) dated 26th July, 2018 in CRA No. 51 of 2015)

RULING

1. The application before the Court is dated 17th October 2024.
The main prayer is for leave to appeal out of time against the judgment issued in CRA No. 51 of 2015, on 26th June 2018. The applicant, Handauka Ali Hatiba was arraigned before the Magistrate's Court in Criminal Case No. 2912 of 2013 at Naivasha 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. He was convicted and sentenced life imprisonment.
2. The applicant's appeal to the High Court against conviction and sentence was dismissed, but, although aggrieved he failed to lodge his notice of appeal within the statutory stipulated time of 14 days. The applicant contends that due to his earlier intention to appeal, this court ought to grant him leave to file his appeal out of time. It is noteworthy the present application invokes Rule 4 of the Court of Appeal Rules to enlarge the time to file his appeal.
3. In response to the application vide written submissions dated 19th February 2025, Mr. A. J. Omutelema Senior Assistant Director of Public Prosecution has amiably conceded to the leave application pointing to the lengthy sentence of life imprisonment.



4. I have considered the application, the supporting affidavit sworn on 31st December 2024 and the respondent's submissions dated 19th February 2025. It is evident that there has been a delay of approximately 6 years and 3 months in filing his appeal against the judgment of the High Court. It is noteworthy that no explanation has been proffered by the applicant for the delay apart from stating that he had an intention to appeal.
5. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR, and stated as follows:

“the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”
6. In applying the principles in *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* (*supra*) and alive to the fact that as in other matters of judicial discretion, so in the case of the discretion conferred on this Court by rule 4 of the *Court of Appeal Rules*, it would be difficult, and it is indeed inexpedient, to lay down any inflexible rules which should govern the exercise of the said discretion. As was observed by Bowen, L.J., in *Gardner vs. Jay* [1885] 29 CHD 50) "that discretion, like other judicial discretion, must be exercised according to common sense and according to justice" and on a case-by-case basis. I do not think that it is wise to attempt to lay down inflexible rules. The rule of law must never be relinquished, but the circumstances of each case must be examined in order to determine whether factual certainty requires some amelioration of legality and, if so, to what extent.
7. Appreciating the concession by the prosecution citing the life imprisonment imposed upon the applicant, and taking into account the need for a court of law to allow a party to have his day in court, I am inclined to exercise my discretion in the applicant's favour. Consequently, the application dated October 17, 2024 is hereby allowed. The applicant shall file his notice of appeal within 14 days from today and thereafter file his record of appeal within 60 days.
8. Orders accordingly.

DATED AND DELIVERED AT NAKURU THIS 27TH DAY OF FEBRUARY, 2025.

J. MATIVO

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR.

