



REPUBLIC OF KENYA



KENYA LAW
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**Kimanga v Republic (Criminal Application E001 of 2025)
[2025] KECA 354 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KECA 354 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E001 OF 2025
JM MATIVO, JA
FEBRUARY 27, 2025**

BETWEEN

JOHN MAKORI KIMANGA 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 3rd May, 2018 in CRA No. 48 of 2016)

RULING

1. The application before the Court is dated 6th January, 2024.
The main prayer is for leave to appeal out of time against the judgment issued in HCCRA No. 48 of 2016 on 3rd May, 2018.
2. The applicant, John Makori Kimanga was arraigned, and tried before the Chief Magistrate Court in Criminal Case No.324 of 2014 at Naivasha with the offence of defilement contrary to section 8 (1) as read with 8 (2) of the *Sexual Offences Act* No. 3 of 2006. He was convicted and sentenced to life imprisonment as prescribed by law. The applicant's appeal to the High Court was dismissed on both conviction and sentence. The applicant failed to lodge his notice of appeal within the statutory-stipulated time of fourteen (14) days.
3. The applicant who is incarcerated and appears in person vide his undated supporting affidavit stated that, he had the intention to appeal against the judgment of the High Court but his relatives failed to instruct an advocate for him and that he was also not furnished with the High Court judgment on time to enable him prepare his appeal on time.



4. As at the time of writing this ruling on 27th February 2025 at 0900 HRS, the respondent is yet to comply with the Court's directions. Rule 58 (2) of the Court of Appeal Rules stipulates:

“(2) If the applicant appears or complies and the respondent fails to appear or comply, the application shall proceed in the absence of the respondent, unless the Court sees fit to adjourn the hearing...”

5. I have considered the application, the notice of appeal, memorandum of appeal and the undated supporting affidavit dated. It is evident that, there has been a delay of approximately 6 years and 7 months in filing the appeal against the judgment of the High Court. Be that as it may, the applicant has maintained that the delay in filing his appeal has been occasioned by the failure by his family to instruct an advocate for him and the failure by the Court to furnish him with the judgment of the High Court.

6. 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.”

7. In applying the principles in Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet (*supra*), and considering that the applicant is serving a life sentence. I am inclined to exercise my discretion in his favour. Accordingly, I allow the motion.

8. The undated notice of appeal and memorandum of appeal are deemed as duly filed. The record of appeal shall be filed within 60 days from today.

9. Orders accordingly.

conclusions

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.

