



REPUBLIC OF KENYA



**Ngatia v Republic (Criminal Application E219 of 2024)
[2025] KECA 265 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KECA 265 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E219 OF 2024
JM MATIVO, JA
FEBRUARY 20, 2025**

BETWEEN

JOSAM MUKUNA NGATIA 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 19th July, 2016 in HCCRA No. 1 of 2014)

RULING

1. The application before the Court is dated 28th October, 2024.
The main prayer is for leave to appeal out of time against the judgment issued in HCCRA No. 1 of 2014, on 19th July, 2016.
2. The applicant, Josam Mukuna Ngatia was arraigned before the Magistrate's Court in Criminal Case No. 3764 of 2012 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 to life imprisonment.
3. 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. Instead, he lodged an application for resentencing at the High Court, which application was dismissed, necessitating the instant application. His present application invokes Rule 4 of the [Court of Appeal Rules](#) to enlarge the time to file his appeal on the sentence imposed.
4. The respondent has not complied with the directions issued by the Deputy Registrar on 24th December, 2024. Therefore, the instant application is not opposed.



5. I have considered the application, the supporting affidavit sworn on 28th October, 2024, and the undated notice of appeal. It is evident that there has been a delay of approximately 8 years and 3 months in filing his appeal against the judgment of the High Court. The applicant's position is that he opted to apply for resentencing before the High Court but since his resentencing was dismissed he has opted to pursue his right to a second appeal.
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), I find that the delay of 8 years and 3 months is inordinate. The applicant did not provide necessary details such as when he applied for re-sentencing, or when the decision on re-sentencing was delivered to enable the court to determine whether he is guilty of inaction. Nevertheless, owing to the confusion that ensued after the Supreme Court decision in the Muruatetu case which was construed as allowing convicts under the *Sexual Offences Act* to apply for re-sentencing and the subsequent clarification by the Apex Court, I am inclined to exercise my discretion in his favour. In exercising my discretion, I have also taken into consideration the fact the applicant is serving a mandatory life sentence, hence the need for him to have his day before this appellate court. Consequently, the application dated 28th October, 2024 is allowed. The applicant shall file his notice of appeal within 14 days from the date of this decision and his record of appeal within 60 days of this decision.

DATED AND DELIVERED AT NAKURU THIS 20TH DAY OF FEBRUARY, 2025.

J. MATIVO

.....

JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR.

