



**Cheruiyot v Republic (Criminal Application E244 of 2024)
[2025] KECA 829 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KECA 829 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E244 OF 2024**

WK KORIR, JA

MAY 9, 2025

BETWEEN

WESLEY KIPKEMOI CHERUIYOT APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to file an appeal out of time against the judgment of the High Court at Narok (F. Gikonyo, J.) dated 24th April 2023 in HCCRA No. 13 of 2019)

RULING

1. In the notice of motion dated 10th December 2024, the applicant, Wesley Kipkemoi Cheruiyot, seeks leave to file an appeal out of time. The applicant's appeal before the High Court was dismissed on 24th April 2023. He had been convicted by the trial court of the offence of defilement contrary to section 8(1) as read with 8(3) of the *Sexual Offences Act* and sentenced to 25 years imprisonment. The application is supported by his affidavit and is premised on the grounds that he could not obtain the proceedings and a copy of the judgment in time to file the appeal. He also annexed a notice of appeal lodged with the High Court on the date of the application and a memorandum of appeal containing six grounds which he is desirous of pursuing on appeal before this Court.
2. When the matter came up for hearing in chambers on 20th March 2025, only the respondent had filed submissions. Regardless, the matter proceeded to hearing.
3. Through submissions dated 19th February 2025, the Senior Assistant Director of Public Prosecutions, Mr. Omutelema indicated that although the period of delay was inordinate, the respondent was not opposed to the enlargement of the time for filing the appeal considering the lengthy jail term meted upon the applicant by the trial court and affirmed by the High Court.
4. The principles for exercising the discretion under rule 4 of the Court of Appeal Rules are well settled. An applicant must declare the whole period of delay and sufficiently explain the delay. Similarly, as



established in Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR, even though there is no definitive maximum or minimum period of delay, a satisfactory explanation will unlock the doors shut by lapse of time.

5. The High Court having rendered its verdict on 24th April 2023, the delay herein is for a period of 1 year and 8 months. The fact that the applicant was in custody ought to count for something while considering the reasonableness of the delay. The applicant explains that he was not supplied with the proceedings in time to file the appeal. In my view, the delay being of 1 year and 8 months, I find it not inordinate considering the explanation given by the applicant. The application is for allowing, which I hereby do.
6. Consequently, the notice of motion is hereby allowed. The applicant's notice of appeal, dated 10th December 2024, lodged together with this application, is deemed as properly filed. All actions consequent to the filing of a notice of appeal shall be in accordance with the Court of Appeal Rules, 2022.

DATED AND DELIVERED AT NAKURU THIS 9TH DAY OF MAY 2025.

W. KORIR

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Deputy Registrar

