



REPUBLIC OF KENYA



KENYA LAW
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**Makokha v Republic (Criminal Application E243 of 2024)
[2025] KECA 1175 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KECA 1175 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E243 OF 2024**

WK KORIR, J

MAY 9, 2025

BETWEEN

ANDREW SIMIYU MAKOKHA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to file an appeal out of time against the judgment of the High Court of Kenya at Nakuru (W. Ouko, J.) dated 20th July 2012 in HCCRA No. 218 of 2007)

RULING

1. In a notice of motion dated 10th December 2024, the applicant, Andrew Simiyu Makokha, seeks an order of enlargement of time to file an appeal against the judgment of the High Court delivered on 20th July 2012. In support of the application, he avers that he was sentenced to life imprisonment upon being convicted for the offence of defilement contrary to section 8(1) as read with 8(2) of the *Sexual Offences Act*. The applicant highlights his intended grounds of appeal and attributes the delay in filing his appeal to failure to secure the judgment and proceedings in time. The application is supported by an undated affidavit sworn by the applicant.
2. Senior Assistant Director of Public Prosecutions, Mr. Omutelema, opposed the application through submissions dated 19th February 2025. Counsel submits that the delay herein is inordinate and unexplained. He also contends that the intended appeal seeks to challenge a lawful sentence. Counsel therefore urges for the dismissal of the application.
3. The parameters for considering an application under rule 4 of the *Court of Appeal Rules* are settled. An applicant must declare the whole period of the delay and sufficiently explain the delay. Additionally, as was appreciated in *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, even though there is no definitive maximum or minimum period of delay, it is only a satisfactory explanation that can unlock the door shut by lapse of time.



4. As pointed out by Mr. Omutelema for the respondent, the delay herein is a whopping 12 years and 5 months. Despite being incarcerated, it is inconceivable that the applicant could not access the proceedings and judgment for over 12 years. He has not demonstrated the steps he took in an attempt to secure the judgment and proceedings. Additionally, as can be gleaned from the exhibited draft memorandum of appeal, the applicant only intends to appeal against sentence. The sentence remains lawful as held by the Supreme Court in *Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae)* [2024] KESC 34 (KLR), as long as section 8 of the *Sexual Offences Act* remains valid. Therefore, as matters stand, the applicant's intended appeal has no likelihood of success. Consequently, leave to appeal out of time must be denied and the application dismissed, which I hereby do.

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

