



**Mambo v Republic (Criminal Application E160 of 2024)  
[2025] KECA 1449 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1449 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION E160 OF 2024  
MSA MAKHANDIA, JA  
JULY 31, 2025**

**BETWEEN**

**STEPHEN OYOO MAMBO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application to file the intended appeal out of time, arising from the Judgment of the High Court of Kenya at Homa-Bay, (Karanja, J.) dated 9th August, 2017 in HCCRA No. 44 of 2019)*

**RULING**

1. Stephen Oyoo Mambo, the applicant, was arrested on 6<sup>th</sup> February, 2015, and subsequently charged with the offence of defilement contrary to Section 8 (1) (2) of the *Sexual Offences Act* in Criminal Case No. 81 of 2015 in the Chief Magistrate's Court at Mbita. At the end of the trial, the appellant was found guilty, convicted and sentenced to life imprisonment.
2. Aggrieved by the conviction and sentence, the applicant lodged a first appeal to the High Court of Kenya at Homa-Bay, being Criminal Appeal Number 44 of 2017. The first appellate court (Karanja (J)), dismissed the appeal on 9<sup>th</sup> August 2017. It is the dismissal of this first appeal, which the applicant terms erroneous, that necessitates this present application for leave to file a second and perhaps last appeal out of time.
3. The applicant acknowledges that the timelines for lodging a second appeal, as stipulated by rules of this Court have lapsed. However, he earnestly implores this Court to consider the specific circumstances that led to this delay, which were largely beyond his control, and to prioritize the overarching principle of substantive justice. That he was a layperson with limited legal knowledge and understanding of the intricate procedural requirements for filing an appeal, particularly a second appeal in this Court. That following the dismissal of his first appeal on 9<sup>th</sup> August 2017, he went into a state of profound despair



and confusion. He genuinely believed that his options for recourse were exhausted. That the delay was primarily occasioned by his lack of appreciation for the stringent procedural technicalities involved in pursuing a second appeal within the prescribed period. That he did not have legal representation at that crucial time to guide him through the complexities of the appellate process. That as an incarcerated person, his access to legal resources, information, and advice was severely limited.

4. While acknowledging the efforts made to provide legal aid within the prison system, the reality on the ground was that such resources are often scarce and overwhelmed. That it was only recently, specifically in October 2024, that he was fortunate enough to seek and obtain advice from paralegals within the prison walls. This invaluable advice shed light on the possibility of pursuing a second appeal and, critically, the procedure for seeking leave to file appeal out of time. The delay, therefore, was not as a result of indolence or disregard for the court's rules, but rather, a direct consequence of his constrained circumstances and lack of timely access to accurate legal guidance.
5. In his written submissions in support of the application, the applicant maintains that, the paramount consideration in applications of this nature is the overriding principle of substantive justice. While rules of procedure are essential for the orderly administration of justice, they are not an end in themselves. They are designed to facilitate justice and not to impede it. To deny him the opportunity to ventilate his second appeal on purely procedural grounds, despite the compelling merits of the intended appeal, would be to elevate form over substance and potentially occasion a grave miscarriage of justice. He takes the view that his intended appeal is not a frivolous or vexatious endeavour.
6. On the contrary, he genuinely believes that the intended appeal stands a very high chance of success, and that a substantive review of his case by this Court on second appeal will reveal serious errors in the previous proceedings that led to wrongful conviction and sentence. While acknowledging that this is not the stage to delve into the full merits of the intended appeal, he briefly highlighted, the strong foundational arguments that underpin his belief in the success of the intended appeal: These are that the evidence presented against the applicant at the trial was fundamentally flawed and inconsistent, there was also misapplication of the law regarding the age of the alleged victim, and crucial evidence in his favour was deliberately withheld and that life imprisonment imposed on him, in the circumstances, was harsh and excessive, and a re-evaluation by the second appellate court may be warranted.
7. The respondent did not contest this application. No papers in opposition to the application were filed by the respondent nor were written submissions were filed by the respondent contrary to the directions given by the Deputy Registrar of this Court during the case management conference. So, as it is the application is unopposed. All the depositions by the applicant have not been countered or controverted. Accordingly, I take them as true.
8. The delay and reasons thereof have been sufficiently explained to my satisfaction. Having perused the grounds of the intended appeal, I do not find them frivolous. I am also satisfied that granting this application will not occasion any prejudice whatsoever to the respondent. The delay, as explained, was not intentional or designed to gain any unfair advantage on the part of the applicant. The interest of justice in ensuring that an individual facing a life sentence has every opportunity to challenge his conviction at every stage of an appellate process far outweighs any perceived inconvenience to the respondent if at all. The applicant is a convicted prisoner serving a life sentence and to deny him leave to file his intended appeal out of time would effectively shut the doors of justice on him, condemning him to an irreversible fate without his exhausting the appellate process. I would therefore in the exercise of my unfettered discretion, which is of course exercised judicially, and in favour of dispensing substantive justice, allow the prayers sought in application dated 25<sup>th</sup> October 2024.



9. The applicant is accordingly granted leave to file his intended appeal out of time. He should do so within the next forty-five (45) days from the date of this ruling.

**DATED AND DELIVERED AT KISUMU THIS 31<sup>ST</sup> DAY OF JULY, 2025.**

**ASIKE-MAKHANDIA**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**

