



REPUBLIC OF KENYA



**Odero v Republic (Criminal Application E158 of 2024)
[2025] KECA 1450 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1450 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E158 OF 2024
MSA MAKHANDIA, JA
JULY 31, 2025**

BETWEEN

EDWIN OTIENO ODERO APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to appeal out of time from the Judgment of the High Court of Kenya at Kisumu, (Ochieng, J.) dated 3rd February, 2022 in HCCRA No. 01 of 2020)

RULING

1. The Applicant was charged with the offence of Defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*. Following a full trial, he was convicted and sentenced to life imprisonment at the Nyando Law Courts.
2. Aggrieved, he moved to the High Court of Kenya at Homa Bay on appeal. The High Court in a Judgment delivered on 3rd February, 2022, upheld the conviction and affirmed the sentence.
3. Desirous of appealing to this Court, the applicant has filed this application seeking for the extension of time within which to file and serve the Record of Appeal. He avers that he was not supplied with the High Court judgment in time so that he could prepare and file the record of appeal; that he is incarcerated with limited ability to move around or communicate with the outside. He is as well representing himself. Further that he relied on his relatives who promised to hire an advocate to process the appeal for him which never came to pass.
4. Apparently, the respondent did not put in any papers in opposition to the application. However, in its written submissions it has conceded to the application.
5. I have carefully considered the application and the draft Memorandum of Appeal attached thereto. I am aware that the power to extend time is a discretionary one, which is only exercise- able by the Court



upon a satisfactory reason being given for the delay. It is trite law that the entire period of delay has to be stated and reasonably explained to the satisfaction of the court. In considering whether to extend time, the Court is obliged to also consider whether the intended appeal is arguable and has chances of success, hence not frivolous.

6. In this application, the decision sought to be appealed was delivered on 3rd February, 2022. This application has been brought two years later. Outrightly a delay of two years is inordinate. It will therefore require a plausible explanation to warrant an extension of time.
7. Be that as it may, I have considered the reason of delay, being that the applicant is incarcerated, representing himself, that he was not served with the Judgment from the High court, his relatives did not leave up to their promise to assist him file the appeal through an advocate and more importantly given the nature of the sentence being served, to wit, life imprisonment. These are valid and plausible reasons which have tilted my hand towards allowing the application. Besides, the respondent has conceded to the application.
8. The upshot is that I allow the application and direct that the record of appeal be filed within the next forty-five (45) days from the date of this ruling.

DATED AND DELIVERED AT KISUMU THIS 31ST DAY OF JULY, 2025.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

