



**Bayayi v Republic (Criminal Appeal (Application) E166 of 2024)
[2025] KECA 1387 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1387 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL (APPLICATION) E166 OF 2024
MSA MAKHANDIA, JA
JULY 30, 2025**

BETWEEN

JUSTUS MUKENYA BAYAYI 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 Bungoma, (Mutende, J.) dated 17th December, 2021 in HCCRA No. 4 of 2019)

RULING

1. Justus Mukenya Bayayi, (“the applicant”), was convicted in the Chief Magistrate’s Court at Bungoma for the offence of defilement and sentenced to 20 years imprisonment.
2. Aggrieved by the conviction and sentence, the applicant preferred an appeal in the High Court of Kenya at Bungoma. The appeal was subsequently heard and dismissed on 17th December, 2021.

Undeterred, the applicant wants to have a second bite of the same cherry by preferring a second and perhaps last appeal in this Court. However, he is unable to do so immediately since the time limited by the rules of this Court for the filing of an appeal from the judgment of the High Court have long expired. He ought to have done so by filing a notice of appeal within fourteen (14) days of the delivery of the judgment pursuant to Rule 61 of the Court of Appeal Rules, and thereafter file the record of appeal within 60 days in terms of Rule 64 of the same rules. All these is now water under the bridge. It is with this realisation that the applicant has initiated this application seeking that he be granted extension of time within which to file and serve the notice as well as the record of appeal on the respondent. Such an application is permissible under Rule 4 of the Court of Appeal Rules.

3. He explains the reason for delay on the basis that after the delivery of the judgment by the High Court, he became totally confused and sickly, not knowing what to do next. That it took a bit of time to



recollect himself and decide on the next course of action. By which time, it was too late in the day and hence this application.

4. When the application was served on the respondent, its reaction was terse and in the following terms: “That upon perusal of the application and appreciation of the contents of Supporting Affidavit thereto, we do not to oppose it... We opine that the delay in filing the Notice of Appeal is not inordinate given the reasons adduced in the Supporting Affidavit. Consequently, we have no objection to the application for extension of time to file Notice of appeal and record of appeal out of time”.
5. This being the case therefore, the application is by consent allowed. The applicant is granted leave to lodge and serve the notice of appeal as well as the record of appeal out of time. Indeed, the notice of appeal and the record of appeal already filed and on record are deemed as filed and served within time.

DATED AND DELIVERED AT KISUMU THIS 30TH 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

