Majani v Republic (Criminal Application E167 of 2024)
[2025] KECA 1390 (KLR) (30 July 2025) (Ruling)

Neutral citation: [2025] KECA 1390 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT KISUMU

CRIMINAL APPLICATION E167 OF 2024

MSA MAKHANDIA, JA

JULY 30, 2025

BETWEEN

ERICK MAJANI ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an application seeking an extension of time to appeal against both conviction and sentence from the Judgment of the High Court of Kenya at Kakamega, (Majanja, J.) dated 26th September, 2019 in HCCRA No. 169 OF 2018)

RULING

1. Erick Majani, ("the applicant") herein, was tried, convicted and sentenced to Life imprisonment for the offence of defilement contrary to section 8(1) as read with 8(2) of The *Sexual Offences Act* in the Senior Principal Magistrate's Court at Hamisi.

2. Dissatisfied with the trial court's decision, the applicant filed an appeal in the High Court of Kenya at Kakamega challenging both the conviction and sentence. The appeal was subsequently heard by with the result that it was dismissed on conviction but succeeded on sentence with the life sentence being substituted with 35 years' imprisonment on the 26th day of September 2019. by Majanja J. Still undeterred, the applicant wishes to try his luck in this Court on second and perhaps last appeal. However, he is unable to file such an appeal immediately as he is a victim of the timelines set by this Court in our rules for undertaking such an exercise. Hence this application which is permissible under Rule 4 of this *Court's Rules*.

3. The applicant explains that the delay was occasioned by his several attempts to lodge the instant application through the Kenya Prisons service and Kakamega High Court that all proved to be in vain. That the last time he did so, the application was struck out by Kakamega High Court (Bett. J) on 9th October 2024 for want of jurisdiction and was directed to file this application in this Court.

4. The applicant further explains that after his appeal was dismissed, the high court did not avail to him the judgment to enable him to prepare and lodge his intended appeal in time. That being a prisoner, and having lost contact with his relatives, he had not been in a position to get in touch with the High Court. He is also convinced, that the respondent will not be prejudiced should he be granted the prayers sought. He asserts that he was serving a 35 years' imprisonment sentence which is long sentence and strongly believes that his appeal is hinged on strong points of law and if granted a chance to appeal, he has high chances of succeeding.

5. The applicant also reverts to Article 50(2) of the *Constitution* of Kenya, for the proposition that a fair hearing extends to a person convicted being granted a chance to appeal to, or apply for review by, a higher court as prescribed by law. That this is the constitutional right that he is exercising in prosecuting this application. In support of all his submissions, the applicant relied on the following authorities *Wanyoike Kariuki v Republic* COACRAPPL E060 of 2024 and *Sila Mutiso v Helen Wangari*, (NRB) Civil Application No. 251 of1997.

6. The application was opposed by the respondent through grounds of opposition. The respondent took the view that the appellant's intended appeal stands no chance of success, it is not arguable and that the applicant had not satisfactorily explained the delay in lodging the intended appeal. That there was no proof that the applicant had attempted to secure a copy of the Judgment of the High Court and he was rebuffed. That a perusal of the draft grounds of appeal reveal that they raise issues of fact as opposed to law and consequently the court will have no jurisdiction to entertain them thereby rendering the appeal unarguable.

7. The respondent also contends that the applicant was initially sentenced to life imprisonment by the trial court. However, on appeal, the sentence was reduced to 35 years' imprisonment which was illegal. That there was every likelihood that should the intended appeal fail, the applicant stands to get an enhancement of the sentence to life. Finally, the respondent pleaded that there must be an end to litigation. I was therefore urged to dismiss the application.

8. I have carefully considered the application, the supporting affidavit, the grounds of opposition, the respective written submissions of the parties, and the law. My take is as follows: Rule 4 of this *Court's Rules* under which this application is brought grants me jurisdiction to entertain the application and all that the applicant needs to persuade me on is the delay and the reasons thereof. As was stated in the case of *Andrew Kiplagat Chemaringo V. Paul Kipkorir Kibet* [2018] eKLR;

> "...the law does not set out any minimum or maximum period of delay. All it states is that the delay should be satisfactorily explained. A plausible and satisfactory explanation for the delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable."

9. Prior to that in the case of *Sila Mutiso v Helen Wangari* (*supra*), this Court opined that in considering applications of this nature there must be an explanation;

> first, the lentth of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeedint if the applicant is tranted; and fourthly, the detree of prejudice to the respondent if the application is tranted. "

10. In the circumstances of this application, I am satisfied that the applicant has precisely demonstrated reasons for the delay in filing the intended appeal on time. There is no replying affidavit sworn by the respondent to counter the applicant's claims. Thus, they remain largely true and believable. Indeed, there is evidence that the applicant has provided regarding the application for extension of time which

he had filed in the High Court of Kenya at Kakamega which upon hearing was struck out on account of that court lacking jurisdiction to interrogate such an application which is a preserve of this Court under Rule 4 of this *Court's Rule*s. In any event, the applicant could not have undertaken steps to lodge the intended appeal in the absence of a copy of the judgment and proceedings of the High Court. I appreciate that the applicant is serving a long sentence and l do not therefore see any prejudice that the respondent will suffer if the application is allowed.

11. Though the respondent alludes to the concept that litigation must come to an end, that cannot be used to deny the applicant the constitutional right to exhaust the appellate process. The fears by the respondent that the applicant may be prejudiced by the enhancement of the sentence should the intended appeal fail, is neither here nor there, as the intended appeal is not only on sentence. Again, as to whether the intended appeal will be on facts or law, that will be the preserve of the bench that will ultimately hear the appeal.

12. I think I have said enough to demonstrate that this application is for allowing. Consequently, the applicant is granted leave to file both the notice and record of appeal within the next forty-five (45) days from the date of this ruling.

DATED AND DELIVERED AT KISUMU THIS 30TH DAY OF JULY, 2025.

ASIKE-MAKHANDIA

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JUDGE O APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR