



**Athelenjo v Republic (Criminal Appeal (Application)
E010 of 2024) [2024] KECA 998 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KECA 998 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL (APPLICATION) E010 OF 2024**

JM MATIVO, JA

JUNE 20, 2024

BETWEEN

CHARLES EKAI ATHELENJO APPELLANT

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 Nyabururu (Kariuki, J.)
dated October 5, 2021 in HCCA No. 33 of 2018 S.O Case No. 2of 2017)*

RULING

1. The application before the Court is dated March 28,2024 and brought under rule 42 and 43 of this Court *Rules*. The main prayer is for leave to be granted to the applicant to appeal out of time against the judgment issued in HCCRA No 33 of 2018 on October 5, 2021. In the judgment, the learned Judge dismissed the applicant’s appeal and upheld the conviction and the life sentence imposed for the offence defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act*.
2. It is the applicant’s case that the reason for the delay in filing his appeal on time was because he was awaiting his relative to appoint an advocate to represent him but due to financial constraints they were unable to instruct an advocate to act on his behalf. He therefore implores this Court to allow him to appeal out of time.
3. In response to the application vide written submissions dated June 18,2024, Mr. Omutelema Senior Assistant Director of Public Prosecution has amiably conceded to the leave application despite insisting that there was inordinate delay on the part of the applicant in filing his appeal. In conceding to the application, Mr. Omutelema pointed to the length of the sentence.
4. Rule 4 of the *Court of Appeal Rules* governs the extension of time. The Rule allows this Court to exercise discretion to extend the time limited by the Rules for the doing of any act authorised or



required by the Rules. In *Leo Sila Mutiso v Helen Wangari Mwangi* [1999] 2 EA, this Court held as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay: secondly, the reason for the delay: thirdly (possibly), the chances of the appeal succeeding if the application is granted: and, fourthly, the degree of prejudice to the respondent if the application is granted”.

5. I have considered the application, the supporting affidavit dated March 28, 2024 and the respondent’s submissions in concession of the motion. In light of the concession and the indefinite sentence of life imprisonment, I am satisfied that the applicant has met the threshold for the exercise of discretion by this Court. Consequently, I hereby allow the application dated March 28, 2024.
6. The applicant shall file a Notice of Appeal within fourteen (14) days hereof. The Record of Appeal shall be filed within sixty (30) days from today.
7. Orders accordingly.

DATED AND DELIVERED AT NAKURU THIS 20TH OF JUNE, 2024.

J. MATIVO

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR

