



**BNM v Republic (Criminal Application E061 of 2024)
[2024] KECA 908 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 908 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E061 OF 2024
MA WARSAME, JA
JULY 26, 2024**

BETWEEN

BNM APPLICANT

AND

REPUBLIC RESPONDENT

(An application for extension of time to file a notice of appeal against the judgment of the High Court at Nakuru (Meoli, J.) dated 31st July, 2018 in HCCRA NO. 10 OF 2016)

RULING

1. Before me is an application dated 16th May 2024 brought under Article 50 of the Constitution and Section 347 of the Criminal Procedure Code. The main prayer sought is leave to appeal out of time against the judgment issued in HCCRA No. 10 of 2016 delivered on 31st July 2018.
2. The applicant, (BN) was convicted of incest contrary to section 20(1) of the Sexual Offences Act and sentenced to life imprisonment in Criminal Case No. SO 42 of 2015 at Naivasha.
His appeal against conviction and sentence was dismissed by the High Court. However, he failed to lodge his notice of appeal within the statutory period 14 day period as espoused in the Rules of this Court and seeks to enlarge the time to appeal.
3. As was stated in Fakir Mohamed vs. Joseph Mugambi & 2 Others, Civil Application No. Nai. 332/04 (unreported) on the discretion of this Court in a Rule 4 application:

“As it is unfettered, there is no limit to the number of actors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted; the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance



of compliance with time limits; the resources of the parties, whether the matter raises issues of public importance are all relevant but not exhaustively factors. ”

4. The applicant blames the delay in filing his appeal on the failure of the High Court to furnish him with the copy of the original High Court proceedings and its judgment despite his intention to appeal.

5. The delay in filing the notice of appeal is 5 years and 9 months.

In my view this delay is inordinate and the explanation that the delay was occasioned by the Court is unsubstantiated. The memorandum of appeal and notice of appeal were both filed on 16th May 2024. There was no indication that the applicant intended to appeal and the appeal is simply an afterthought.

6. Consequently, I decline to exercise my discretion in favour of the applicant and dismiss the application with no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JULY, 2024.

M.WARSAME

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

