



**CWK v Republic (Criminal Application E036 of 2024)
[2024] KECA 907 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 907 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E036 OF 2024**

A ALI-ARONI, JA

JULY 26, 2024

BETWEEN

CWK APPLICANT

AND

REPUBLIC RESPONDENT

*(An appeal from the conviction and sentence of the High Court at Nakuru
(Ngugi, J.) delivered on 13th May 2019 in HCCRA No. 293 of 2019)*

RULING

1. Before the court is an application by way of a notice of motion dated 19th June 2024 brought under Rules 4 of the *Court of Appeal Rules*, seeking an extension of time to file an appeal out of time.
2. The application is predicated on the grounds on the face of the application that; the applicant was charged with the offence of incest contrary to Section 20(1) of the *Sexual Offences Act* No. 3 of 2006, in the Chief Magistrates Court at Nakuru and was sentenced to life; he thereafter preferred an appeal which was dismissed on 13th May 2019 in the High Court at Nakuru in Criminal Appeal No. 293 of 2014; the applicant did not lodge a timeous appeal to this Court because he was not provided with the High Court’s judgment to enable him to prepare the memorandum of appeal; that due to the applicant’s earlier intention to appeal, he now begs leave for extension of time to appeal; he is yet to be provided with the documents alluded to above and he feels that the time to file his appeal is about to run out.
3. The application is further supported by the affidavit of the applicant in which he rehashes the grounds on the face of the application. There was no response filed by the respondent.
4. I have considered the application and the affidavit in support. The issue for determination is whether the applicant is deserving of the orders sought. Rule 4 of this Court’s Rules governs the extension of



time. The Rule allows this Court to exercise discretion to extend the time limited by the Rules for doing any act authorized or required by the Rules.

5. In the case of *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018]* eKLR, the Supreme Court of Kenya pronounced itself on the question of extension of time follows:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for 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.”

6. This Court in the case of *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi, Civil Appeal No. 255 of 1997*, on the exercise of discretionary powers when considering an application for enlargement of time stated:

“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.”

7. The applicant has explained that the delay in receiving the proceedings from the High Court impeded him from filing his appeal on time. He has indeed indicated that he has yet to be supplied with the same. The delay is certainly long; it is more than 4 years since the judgment. I take note that the applicant was sentenced to life imprisonment and bearing in mind the emerging jurisprudence on indefinite sentences this is a matter that may require further interrogation by this Court.

8. In the circumstances, the application be and is hereby allowed. The notice of appeal and the memorandum of appeal be filed within the next 30 days of the date hereof.

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

ALI-ARONI

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JUDGE OF APPEAL

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

SIGNED

DEPUTY REGISTRAR.

