



**Ekeno v Republic (Criminal Application E029 of 2024)  
[2024] KECA 994 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 994 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E029 OF 2024**

**A ALI-ARONI, JA**

**JULY 26, 2024**

**BETWEEN**

**ALFRED ATUTI EKENO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An appeal against both conviction and sentence from the Judgment of  
the High Court at Kericho (J.K. Sergon, J.) in HCCRA No. E040 of 2021)*

**RULING**

1. Before the court is an application by way of a notice of motion dated 17<sup>th</sup> April 2024 brought under Article 50 of the Constitution and Section 347 of the Criminal Procedure Code 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 learned judge erred in law: by upholding the conviction and sentence of the appellant; failing to note that the age of the complainant was not conclusively proved; failing to note that the identification of the appellant was not proved by recognition; failing to note that penetration of the complainant was not conclusively proved.
3. The application is further supported by the affidavit of the appellant in which he deposes that he was charged with the offence of defilement contrary to Section 8(1) as read with 8(2) of the Sexual Offences Act No. 3 of 2006 in Criminal Case No. 09 of 2020 at Kericho Law Court; that he appealed to the High Court in Criminal Appeal No. E040 of 2021 and his appeal was dismissed in its entirety; that the learned judge erred in law: by upholding the conviction and sentence of the appellant; failing to consider the grounds enumerated on the grounds on the face of the application which I need not rehash.



- 4. The respondent has filed submissions dated 5<sup>th</sup> July 2024 and does not oppose the appeal. The respondent submits that though the delay in filing the appeal is inordinate, the applicant's sentence is lengthy, being life imprisonment, and in the circumstances, the respondent does not oppose the application.
- 5. I have considered the application, the supporting affidavit, and the submissions. The issue for determination is whether the applicant deserves the orders sought. Rule 4 of this *Court's Rules* provides for the extension of time. *The Rule* allows the court to exercise discretion to extend the time limited by the Rules for doing any act authorized or required by *the Rules*.  
  
In the case of *Leo Sila Mutiso vs. Helen Wangari Mwangi* [1999] 2 EA, this Court held that "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 in general 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: third (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.
- 6. The applicant has not indicated why it took him more than 3 years to file his appeal. The delay is certainly long, however, as observed by the respondent the applicant was sentenced to life imprisonment. Further bearing in mind the emerging jurisprudence on indefinite sentences this is a matter that may require further interrogation by this Court.
- 7. In the circumstances the application be and is hereby allowed. The notice of appeal and memorandum of appeal annexed to the application are deemed as duly filed.

**DATED AND DELIVERED AT NAKURU THIS 26<sup>TH</sup> DAY OF JULY, 2024.**

**ALI-ARONI**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**SIGNED DEPUTY REGISTRAR**

