



**Osaire v Republic (Criminal Application E034 of 2024)
[2024] KECA 906 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 906 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E034 OF 2024**

A ALI-ARONI, JA

JULY 26, 2024

BETWEEN

JOHN ECHONGET OSAIRE APPLICANT

AND

REPUBLIC RESPONDENT

(An appeal against the conviction and sentence in a Judgment of the High Court of Kenya at Naivasha (Ngenye, J.) delivered on 31st January 2019 in HCCRA No. 17 of 2019)

RULING

1. Before the court is an application by way of a notice of motion dated 30th March 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. The application is predicated on the grounds on the face of the application that; the applicant was charged and convicted of the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act No. 3 of 2006 in Criminal Appeal No. 46 of 2017 at Naivasha Chief Magistrates Court and sentenced to life imprisonment; that the applicant appealed to the High Court in HCCRA No. 17 of 2019 where the learned judge upheld his conviction and sentence; that this application has been filed without any delay; that the time the appellant had spent in custody was computed into his sentence; that the applicant's appeal was dismissed and he intends to appeal. The application is further supported by the affidavit of the applicant where he rehashed the grounds on the face of the application. In addition, the applicant states that the learned judge erred in law; by convicting and sentencing the applicant; by failing to note identification was not conclusively proved; by failing to note that penetration was not conclusively proved.
2. The respondent has filed submissions dated 5th July 2024 and submits that the delay in filing his appeal is inordinate, however, given the nature of the sentence; being life imprisonment, the respondent does not oppose the application for leave to lodge a notice of appeal out of time.



3. I have considered the application, the supporting affidavit, and the submission made by the respondent. The issue for determination is whether the applicant deserves 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.
4. In the case of Andrew Kiplagat Chemaringo v. 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.”

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: 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.

5. No reasons have been cited for the delay, save that the applicant intends to appeal in the matter. The delay is certainly long; it is more than 4 years since the judgment, 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.
6. In the circumstances, the application be and is hereby allowed. The notice of appeal and the memorandum of appeal annexed to the application are deemed as duly filed.

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

ALI-ARONI

JUDGE OF APPEAL

I certify that this is a true copy of the original

signed

DEPUTY REGISTRAR

