



REPUBLIC OF KENYA



KENYA LAW
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**Waweru v Republic (Criminal Application E062 of 2024)
[2024] KECA 997 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 997 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E062 OF 2024
MA WARSAME, JA
JULY 26, 2024**

BETWEEN

HILLARY WAWERU APPLICANT

AND

REPUBLIC RESPONDENT

(An application for leave to appeal and extension of time to file a notice of appeal against the judgment of the High Court at Nakuru (Justice Joel Ngugi) dated 18th March, 2020 in HCCRA NO NO. 188 OF 2016)

RULING

1. The applicant, (Hillary Waweru) has filed the application dated 28th May 2024 seeking leave to file a notice of appeal out of time against the judgment of the High Court issued in HCCRA No. 188 of 2016 on 18th March 2020 which dismissed his appeal against conviction and sentence of 20 years for attempted defilement contrary to Section 9(1) as read with Section 9(2) of the *Sexual Offences Act*.
2. The applicant blames the delay on the failure of the High Court to furnish him with a copy of the original High Court proceedings and a copy of the judgment. He submits that due to his incarceration for the offence, he was unable to follow up with the court on his desire to appeal the judgment of the High Court. Furthermore, he submitted that the respondent would not be prejudiced and was not opposed to his application.



3. The court has settled on the matters which should be taken into consideration when the court was called upon to exercise its discretion. Those matters, as was stated in the case of *Leo Sila Mutiso v Helen Wangari*, (NRB) Civil Application No. 251 of 1997, include:

“... 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.”

4. In this case, the High Court rendered its judgment on 18th March 2020. An appeal, if any, should have been lodged at the beginning of April 2020.

5. By the time the applicant filed the present application, for extension of time, the period which had lapsed is almost 4 years and 2 months.

6. 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 28th May 2024. There is no indication whatsoever that the applicant intended to appeal. The appeal is simply an afterthought.

7. 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

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

