



**WK v Republic (Criminal Application E060 of 2024)  
[2024] KECA 996 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 996 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E060 OF 2024  
MA WARSAME, JA  
JULY 26, 2024**

**BETWEEN**

**WK ..... 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 (Joel Ngugi J.) dated 7th August, 2018 in HCCRA No. 180 OF 2014)*

**RULING**

1. The applicant, (WK) was convicted of incest contrary to section 20(1) of the *Sexual Offences Act* and sentenced to life imprisonment in Criminal Case 817 of 2012 at Nakuru. The High Court, Ngugi J. (as he then was) upheld the decision of the trial court in a judgment dated 7<sup>th</sup> August 2019.
2. The applicant now wishes to appeal that decision out of time and has filed an undated application to that effect. The main reason for the delay of about three years and eight months is that he relied on his relatives who promised to hire a lawyer to represent him but could not do so due to financial constraints.
3. The intended appeal is against conviction and sentence as stated in the notice of motion dated 18<sup>th</sup> April 2023. The grounds of appeal as stated in the Memorandum of Appeal are that the Learned Judge erred by:
  - a. Failing to find that the ingredients to the offence were not conclusively proved
  - b. Failing to appreciate that there was no medical evidence linking the applicant to the commission of the offence



- c. Failing to find that the prosecution failed to discharge the burden of proof to the required standard
4. In determining the matter, I am guided by the dicta in *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, where it was held that:
- “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 the 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.”
5. I find that the reason for the delay given by the applicant plausible. Furthermore, the grounds of appeal raise questions of law proper for determination by this Court. Accordingly, I find that the applicant has satisfied the criteria for grant of leave to extend time. I direct that the Notice of appeal be filed within 14 days.

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

**M.WARSAME**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**Signed**

**DEPUTY REGISTRAR**

