



**Yegon v Republic (Criminal Application E033 of 2024)
[2024] KECA 905 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 905 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E033 OF 2024
A ALI-ARONI, JA
JULY 26, 2024**

BETWEEN

BENARD ROP YEGON APPLICANT

AND

REPUBLIC RESPONDENT

(An appeal against both the conviction and sentence from the Judgment of the High Court at Kericho (J.K. Sergon, J.) delivered on 18th May 2019 in HCCRA No. 44 of 2017)

RULING

1. Before the court is an application by way of a notice of motion dated 29th 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. The application is predicated on the grounds on the face of the application that the learned appellate judge erred in law; by convicting and sentencing the appellant; failing to note that penetration of the complainant was not conclusively proved; failing to note that the age of the complainant was not conclusively proved; failing to note that identification of the accused was not proved.
2. The application is further supported by the affidavit of the appellant dated the 24th of April 2024, in which he deposes that he was charged with 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 Case No. 4 of 2016 at Kericho Law Court and sentenced to life imprisonment; that he appealed to the High Court at Kericho, in High Court Criminal Appeal No. 44 of 2017 and his appeal was dismissed; that he was not supplied with the copy of the original High Court's proceedings and its judgment to enable him to appeal on time; and begs leave of the court to appeal out of time.



3. 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; life imprisonment, the respondent does not oppose the application for leave to file an appeal out of time.
4. I have considered the application, the supporting affidavit, and the respondent's submission. The issue for determination is whether the applicant deserves the orders sought. Rule 4 of the [Court of Appeal 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 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 the case of *Leo Sila Mutiso v Helen Wangari Mwangi* [1999] 2 EA, this Court held:

“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 the 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 reason for the delay is cited as being the delay in receiving the High Court proceedings. 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.
7. In the circumstances, the application be and is hereby allowed. The notice of appeal and the memorandum of appeal annexed to the application is deemed as duly filed.

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

