



**Hamisi v Republic (Criminal Appeal (Application)
E023 of 2024) [2024] KECA 781 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KECA 781 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL (APPLICATION) E023 OF 2024**

JM MATIVO, JA

JULY 4, 2024

BETWEEN

PATRICK HAMISI APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to file an appeal out of time from the Judgment of the High Court of Kenya at Nakuru (Wendoh, J.) dated 16th December 2011 in HCCRA No. 9 of 2010)

RULING

1. The application before me is dated 31st May 2022. The main prayer is leave to appeal out of time against the judgment issued in HCCRA No. 9 of 2010 on 16th December 2011.
2. The applicant, Patrick Hamisi, was charged and tried before the Chief Magistrate Court in Criminal Case No. 1518 of 2009 at Naivasha 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.
He was convicted of the charge and sentenced to life imprisonment.
3. His appeal against conviction and sentence was dismissed. Even though aggrieved, the applicant failed to lodge his notice of appeal within the statutory-stipulated time of fourteen (14) days. His present application invokes rule 4 of the *Court of Appeal Rules* to enlarge the time he is permitted to file his appeal.
4. The applicant who is incarcerated and appears in person, vide his supporting affidavit dated 31st May 2022 states that the delay in filing his appeal was occasioned by his transfer to Naivasha Maximum Security Prison where he became disillusioned.



5. *Vide* directions issued by this Court on 27th June 2024, the parties were directed to file submissions before the hearing date. As at the time of writing this ruling on 4th July 2024 at 0930hrs, the respondent was yet to comply with the Court’s directions. Rule 58 (2) of the *Court of Appeal Rules* stipulates:
 - (2) If the applicant appears or complies and the respondent fails to appear or comply, the application shall proceed in the absence of the respondent, unless the Court sees fit to adjourn the hearing.
6. I have considered the application, the notice of appeal, memorandum of appeal and the supporting affidavit dated 31st May 2022. It is evident that there has been a 10 years and 5 months delay in filing an appeal against the judgment of the High Court. The applicant’s position is that the delay was occasioned by his transfer to Naivasha Maximum Security Prison after his appeal was dismissed and he therefore became disillusioned.
7. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, and stated as 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.”
8. In applying the principles in *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* (supra), and considering that the applicant is serving a life sentence. I am inclined to exercise my discretion in his favour. Accordingly, I allow the motion.
9. The undated notice of appeal and memorandum of appeal are deemed as duly filed. The Record of Appeal shall be filed within 60 days from today.

DATED AND DELIVERED AT NAKURU THIS 4TH OF JULY, 2024.

J. MATIVO

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

Deputy Registrar

