



**PKK v Republic (Criminal Appeal (Application)
E020 of 2024) [2024] KECA 770 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KECA 770 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL (APPLICATION) E020 OF 2024**

JM MATIVO, JA

JULY 4, 2024

BETWEEN

PKK 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 Nyahururu (Wendoh, J.) dated 19th January 12018 in HCCRA No. 35 of 2017)

RULING

1. The application before me is dated 9th April 2024 in which the applicant seeks leave to appeal out of time against the judgment issued in HCCRA No. E003 of 2020 on 19th January 2018. The applicant, PKK, was charged and tried before the Principle Magistrate Court, Nyahururu in Criminal Case No. 2264 of 2013 with the offence of incest contrary to section 20 (1) of the Sexual Offences Act No. 3 of 2006. He was convicted and sentenced to life imprisonment.
2. The applicant’s appeal against conviction and sentence was dismissed. The applicant did not lodge his notice of appeal within the statutory-stipulated period of 14 days. He has now approached this Court under rule 4 of the Court of Appeal Rules, 2022 seeking enlargement of time to file his appeal. In his supporting affidavit dated 9th April 2024, the applicant states that the delay in filing his appeal was due to financial constraints making it impossible to instruct an advocate to defend him.
3. Following this Courts directions issued on 27th June 2024 directing parties to file submissions, the respondent filed submissions dated 3rd July 2024 in support of the application.
4. I have considered the application, the notice of appeal, memorandum of appeal, and the supporting affidavit. It is evident that there has been a delay of 7 years and two (2) months. The applicant’s position



is that the delay was occasioned by his relatives' financial constraints which made it impossible for them to instruct an advocate to defend him.

5. 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.”

6. In applying the principles in *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* (*supra*), and considering that the applicant is on death row, I am inclined to exercise my discretion in his favour. Accordingly, 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

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

