



**JMK v Republic (Criminal Appeal (Application)
E027 of 2024) [2024] KECA 772 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KECA 772 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL (APPLICATION) E027 OF 2024**

JM MATIVO, JA

JULY 4, 2024

BETWEEN

JMK 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 14th March 2014 in HCCRA No. 186 of 2011)

RULING

1. The application before the Court is dated 26th March 2024. The main prayer is leave to appeal out of time against the judgment issued in HCCRA No. 186 of 2011 on 14th March 2014. The applicant, JMK, was charged before the Chief Magistrate Court, Nyahururu in Criminal Case No. 1904 of 2010 with the offence of incest contrary to section 20(1) of the Sexual Offences Act No. 3 of 2006. The appellant was convicted and sentenced to life imprisonment.
2. His appeal against conviction and sentence was dismissed. The applicant was not able to lodge his notice of appeal within the statutory- stipulated time of 14 days. He has approached this Court under rule 4 of the Court of Appeal Rules seeking enlargement of time to file his appeal. The applicant in his undated supporting affidavit states that the lack of the trial court’s records made it impossible for him to file an appeal. He also claimed he is a pauper and therefore seeks waiver of Court fees.
3. This Court issued directions on 27th June 2024 directing the parties to file submissions before the hearing date. The respondent in its submissions dated 3rd July 2024 does not oppose the application.
4. I have considered the application, the notice of appeal, memorandum of appeal, and the undated supporting affidavit. It is evident that there has been a ten (10) years delay in filing an appeal against



the judgment of the High Court. The applicant's position is that the delay was occasioned by the lack of records of the trial court.

5. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of *Andrew Kiplagat Chemaringo vs. 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 serving a life sentence, I am inclined to exercise my discretion in his favour.

However, it has not been demonstrated that the absent record is now available to avoid issuance of orders in vain. Consequently, the deputy registrar is hereby directed to furnish the applicant with a record within 60 days hereof.

7. In conclusion, the undated notice of appeal and memorandum of appeal dated 26th March 2024 are deemed as duly filed. The Record of Appeal shall be filed within 60 days from today and the appeal shall thereafter placed before the Court for hearing.

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

