



**Guya v Republic (Criminal Appeal (Application) E007 of 2023)  
[2024] KECA 1252 (KLR) (20 September 2024) (Ruling)**

Neutral citation: [2024] KECA 1252 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPEAL (APPLICATION) E007 OF 2023  
JM NGUGI, JA  
SEPTEMBER 20, 2024**

**BETWEEN**

**VINCENT ONGAYI GUYA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for extension of time to file the Appeal out of time  
in an intended appeal from the Judgment of the High Court of Kenya at  
Kisumu (Odera, J.) dated 15th February, 2023 in HCCRA No. E051 of 2022)*

**RULING**

1. The Applicant was charged, tried and convicted of the offence of defilement contrary to section 8(1) as read with 8(3) of the *Sexual Offences Act*, No. 3 of 2006 for defiling a 14-years-old minor in Winam Magistrate’s Court’s Criminal Case No. E 015 of 2022. He was sentenced to 10 years imprisonment on 5<sup>th</sup> October 2022.
2. Aggrieved, he moved to the High Court on appeal. The High Court, in a judgment delivered on 15<sup>th</sup> February, 2023, upheld the conviction. On sentence, the High Court considered the sentence imposed as unduly lenient and enhanced it 20 years imprisonment in view of what the High Court saw as aggravating circumstances in the case.
3. In his supporting affidavit in support of an application for extension of time to file an appeal, the applicant concedes that he was aware of the judgment and was dissatisfied with it. He says that he instructed his then advocate, Ms. Nyagol of Ayoo & See Advocates to file an appeal on his behalf. He thought this had happened. However, he says he was dismayed to learn that no such appeal had been filed when he sent his brother to check on the appeal. It was only then, he says, that he approached his present lawyer and instructed him to regularize the appeal. The present lawyer brought the present



application. It dated 18<sup>th</sup> September, 2023. It seeks leave to file the appeal out of time and/or to deem the appeal already filed untimeously as duly filed.

4. The applicant says that he has an arguable appeal – chiefly that the High Court impermissibly enhanced his sentence from 10 years imprisonment to 20 years. The respondent concedes that the appeal is arguable; and also concedes that the delay in filing the appeal is not inordinate. Consequently, the respondent does not oppose the application for extension of time.

5. The application is governed by Rule 4 of the *Court of Appeal Rules* which provides that:

“The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”

6. The principles on which this Court may exercise the discretion to extend time under Rule 4 were set out in *Leo Sila Mutiso v Hellen Wangari Mwangi* 2 EA 231 in which it was held as follows:

“It is now settled that the decision whether to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this court takes in to account in deciding whether to grant an extension of time are, first the length of the delay, secondly the reasons for the delay, thirdly (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.”

7. In the present case, the impugned judgment was delivered on 15<sup>th</sup> February, 2023. The present application was filed on 18<sup>th</sup> September, 2023. Given the explanation by the applicant – that he had instructed another advocate to file his appeal and had assumed that it had been duly filed; and given that the applicant is in custody; and given that he had demonstrated the efforts he took to ascertain the progress of the appeal, the respondent is right to concede this application. The applicant in this case evidently exercised due diligence. It is also a factor that his appeal is eminently arguable – defined as raising at least one issue that merits serious consideration by the Court.

8. In the circumstances, the application is merited and is allowed as prayed. The Notice of Appeal filed by the applicant, to wit Kisumu Criminal Appeal No. E051 of 2023 is deemed to be duly filed and served.

9. Orders accordingly.

**DATED AND DELIVERED AT KISUMU THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**JOEL NGUGI**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**

