



**Koech v Republic (Criminal Application E047 of 2024)
[2024] KECA 1307 (KLR) (20 September 2024) (Ruling)**

Neutral citation: [2024] KECA 1307 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E047 OF 2024
S OLE KANTAI, JA
SEPTEMBER 20, 2024**

BETWEEN

JOSEPHAT KOECH APPLICANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the Judgment of the High Court at Bomet (M. Muya, J.) delivered on 16th May, 2019 in H.C. Criminal Appeal No. 48 of 2017.)

RULING

1. The application by the applicant, Josphat Koech, under rule 4 The Court of appeal Rules is for leave to extend time to appeal to this Court. It is stated in the application and affidavit in support that the applicant was convicted by the trial court of the offence of defilement and was sentenced to life imprisonment. His first appeal to the High Court of Kenya at Bomet was dismissed on 16th May, 2019. He says that he did not appeal on time because he was not provided with proceedings of the High Court on time to enable him appeal, he had not received proceedings even as he prepared the application for leave to extend time. Attached to the application is undated Notice of Appeal and Memorandum of Appeal.
2. The respondent states in written submissions that there is inordinate delay in bringing the application but because of the life sentence imposed the respondent does not oppose the application.

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this 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, 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."

3. The principles that govern an application like this one are well known as was held in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231 as follows: I do not have much information on the relevant periods of time that have elapsed apart from the agreed fact that the applicants appeal to the High Court at Bomet was dismissed on 16th May, 2019. The applicant says that he was not provided with proceedings of the High Court on time to enable him appeal. I note that the appellant is a convict who may not have the best facilities in prison to enable him comply with strict timelines required by our rules. He is also unrepresented. The respondent takes the position that in view of the life sentence imposed the applicant should be granted leave.
4. I have considered the application and the reasons given for delay. I have also seen the grounds of appeal proposed to be argued on appeal and I think they are not idle grounds, they deserve a consideration by the Court on appeal.
5. I allow the Motion. Let the applicant lodge a Notice of Appeal within fourteen (14) days of today.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF SEPTEMBER, 2024.

S. ole KANTAI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

