



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kipkemoi v Republic (Criminal Application E072 of 2024)
[2024] KECA 1376 (KLR) (8 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1376 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E072 OF 2024
MA WARSAME, JA
OCTOBER 8, 2024**

BETWEEN

GEOFFREY KIPKEMOI APPLICANT

AND

REPUBLIC RESPONDENT

(An application for extension of time to file a notice of appeal, against the judgment of the High Court at Kericho (Muya, J.) dated 28th March, 2017 in HCCRA No. 36 OF 2015)

RULING

1. The applicant, (Geoffrey Kipkemoi) was convicted of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* and sentenced to life imprisonment in Criminal Case 59 of 2014 at Kericho. The High Court, (Muya J.) upheld the decision of the trial court in a judgment dated 28th March 2017.
2. The grounds as stated on the face of the application and supported by the supporting affidavit sworn by the applicant are that his appeal has high chances of success and that he is a pauper and not able to raise the required fee.
3. The respondent in its submissions dated 11th September 2024 contend that even though the delay is inordinate and unexplained, they do not oppose the application since the sentence is lengthy.



4. This court has settled on the matters which should be taken into consideration when the court was called upon to exercise its discretion. Those matters, as was stated in the case of Leo Sila Mutiso vs Helen Wangari, (NRB) Civil Application No. 251 of 1997, include:

“... 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.”

5. I have perused the application and the affidavit in support of the application and not a single reason has been given for the delay of about 7years. Again, no grounds of appeal or draft memorandum of appeal have been mentioned to show the success of the intended appeal and the applicant’s inability to raise the required fee is unsubstantiated and vague.

6. Consequently, no tangible reason has been offered for the delay of seven years, which I find inordinate. This court cannot act capriciously or on whims. I therefore decline to exercise my discretion and dismiss the application with no order as to costs.

DATED AND DELIVERED AT NAKURU THIS 8TH DAY OF OCTOBER, 2024.

M.WARSAME

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

