



REPUBLIC OF KENYA



**KENYA LAW**  
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**Cypriano v Republic (Criminal Application E108 of 2024)  
[2024] KECA 1370 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1370 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E108 OF 2024  
S OLE KANTAI, JA  
OCTOBER 3, 2024**

**BETWEEN**

**MOSES MWENDA CYPRIANO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for extension of time to lodge Notice of Appeal and Leave to file appeal out of time from the Judgment of the High Court at Chuka (Limo, J.) dated 29th April, 2020 in HC Criminal Appeal No.13 of 2019.)*

**RULING**

1. The applicant Moses Mwenda Cypriano by Motion on notice prays in the main that I allow him to appeal out of time. He says in a supporting affidavit that he was charged with the offence of defilement at Marimanti Law Courts; he was convicted and sentenced to an undisclosed prison term; he appealed to the High Court of Kenya, Chuka, but the appeal was dismissed by Limo, J. in a judgment delivered on 29<sup>th</sup> April, 2020. The homegrown motion is dated at Naivasha Main Prison on 17<sup>th</sup> July, 2024 and he has attached a Memorandum of Appeal where 6 grounds of appeal are set out. He intends to argue on appeal that the ingredients of the offence of defilement were not proved; that the sentence awarded was harsh and excessive, among other grounds.
2. I have seen written submissions by the respondent which office has no objection to the application.
3. The principles that apply in an application for leave to extend time were well set out in the case of *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* [1999] 2 EA 231 as follows:
4. I note that the applicant's appeal to the High court was dismissed on 29<sup>th</sup> April, 2020 which is over four (4) years ago. The applicant has not explained why he did not appeal on time or within reasonable time. I note however that he is unrepresented and it is possible that he has not had benefit of a lawyer all along. It is also possible that he has been in custody all along and this may have handicapped him



making it not possible for him to be able to keep timelines required by our rules. The respondent does not object to the application. The applicant has also raised grounds of appeal which I think he should be given an opportunity to advance on appeal.

5. I exercise my discretion and extend time as prayed. Let the applicant file appeal within twenty one (21) days of today.

**DATED AND DELIVERED AT NYERI THIS 3<sup>RD</sup> DAY OF OCTOBER, 2024.**

**S. OLE KANTAI**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

