



REPUBLIC OF KENYA



**Koech v Republic (Criminal Application E070 of 2024)
[2024] KECA 1336 (KLR) (1 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1336 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E070 OF 2024
MA WARSAME, JA
OCTOBER 1, 2024**

BETWEEN

STEPHEN KIPROTICH KOECH APPLICANT

AND

REPUBLIC RESPONDENT

*(An application for leave to appeal and extension of time to file
a notice of appeal against the judgment of the High Court at
Nakuru(Adero J.) delivered in March,2020 in HCCRA NO. 76 OF 2012)*

RULING

1. The applicant, (Stephen Koech) has filed the instant application dated 14th May, 2024 seeking leave to file a notice of appeal out of time against the judgment of the High Court issued in HCCRA No. 76 of 2012 delivered in March, 2020 which dismissed his appeal against conviction and upheld his sentence of life imprisonment for defilement contrary to Section 8(1) as read with Section 8(2) of the [Sexual Offences Act](#).
2. The applicant blames the delay on the failure of the High Court to furnish him with a copy of the original High Court proceedings and a copy of the judgment.
3. In opposition to the application the respondent filed written submissions and submitted that the applicant filed High Court Misc. Application No.150 of 2019 in the High Court seeking resentencing but the application was dismissed for want of jurisdiction. The also contended the applicant had admitted in the proceedings that he withdrew the appeal in the Court of Appeal so he could pursue resentencing which was tantamount to abuse of the court process.



4. The 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. In this case, an appeal, if any, should have been lodged in April 2020. However, by the time the applicant filed the instant application, for extension of time, more than four years had lapsed.

6. In my view this delay, which is inordinate and has not been explained. Furthermore, the assertion that the delay was occasioned by the Court is unsubstantiated. There is no indication whatsoever that the applicant intended to appeal. The appeal is simply an afterthought or an indication that indeed the applicant is attempting a second bite of the cherry after his application for resentencing was dismissed.

7. Consequently, I decline to exercise my discretion in favour of the applicant and dismiss the application with no order as to costs.

DATED AND DELIVERED AT NAKURU THIS 1ST DAY OF OCTOBER, 2024.

M. WARSAME

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

