



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njeri v Republic (Criminal Application E064 of 2024)  
[2024] KECA 1340 (KLR) (1 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1340 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E064 OF 2024  
MA WARSAME, JA  
OCTOBER 1, 2024**

**BETWEEN**

**STEPHEN MWANGI NJERI ..... 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 (Ongudi, J.) dated 20th September, 2023 in HCCRA NO. E 021 OF 2021)*

**RULING**

1. The applicant, (Stephen Mwangi) has filed the instant application dated 9<sup>th</sup> February, 2024 seeking leave to file a notice of appeal out of time against the judgment of the High Court issued in HCCRA No. E 021 of 2021 on 20th September, 2023 which dismissed his appeal against conviction and upheld the 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, as stated in the motion and supporting affidavit, blames the delay in filing the notice of appeal 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. The respondent in his submissions dated 11<sup>th</sup> September, 2024 supports the application and contends that even though the delay is inordinate, the appellant who is incarcerated was not able to pursue the filing of the appeal on his own.



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, the High Court rendered its judgment on 20th September 2023. The Notice of appeal should therefore have been lodged by 4<sup>th</sup> October 2023. By the time the applicant filed the present application, for extension of time, the period which had lapsed was almost 4months.

6. In applying the principles in Leo Sila Mutiso (supra), the delay of four months is not inordinate in the circumstance of this case and further considering that the applicant is serving a sentence of life imprisonment, I am inclined to exercise my discretion in his favour.

7. The applicant shall file a Notice of Appeal within fourteen (14) days hereof. The Record of Appeal shall be filed within sixty (60) days hereof and the appeal thereafter placed before the Court for hearing.

**DATED AND DELIVERED AT NAKURU THIS 1<sup>ST</sup> DAY OF OCTOBER, 2024.**

**M. WARSAME**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

