



REPUBLIC OF KENYA



**KENYA LAW**  
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**Oungo v Republic (Criminal Application 118 of 2024)  
[2024] KECA 1335 (KLR) (1 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1335 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION 118 OF 2024  
MSA MAKHANDIA, JA  
OCTOBER 1, 2024  
[IN CHAMBERS]**

**BETWEEN**

**CALEB OKUMU OUNGO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Application seeking extension of time within which to file and serve Record of Appeal against the Judgment of the High of Kenya at Kisumu, (Kamau, J.) dated 29th March, 2022 in HCCRA No. 20 of 2019)*

**RULING**

1. The applicant was charged with the offence of defilement contrary to section 8(1) as read with section 8 (2) of the *Sexual Offences Act*. Upon full trial, he was found guilty and upon conviction, he was sentenced to life imprisonment on 30<sup>th</sup> April 2019. Aggrieved by the conviction and sentence, the applicant lodged an appeal in the High Court. The High Court in a judgment delivered on 29<sup>th</sup> March, 2022, dismissed the appeal in its entirety.
2. Desirous of appealing further to this Court, the applicant was unable to do so within the prescribed time lines. He has accordingly lodged this application seeking leave of court to file his second appeal in this Court out of time. The application is supported by the affidavit of the applicant. In the main he depones that the reason for the delay was that he was depending on his family members to hire an advocate for him to pursue the appeal. However, due to financial constraints they were unable to do so. The respondent did not file any documents in opposition to the application and accordingly the assertions by the applicant are uncontroverted. Indeed, in its written submissions in response to the application, the respondent has categorically stated that it does not oppose the application. It should however be noted that the applicant did not file written submissions in support of the application.



- 3. I have carefully read and considered the application, the supporting affidavit and the submissions of the respondent and this is my take on the application. The power to extend time is discretionary, exercisable by court upon satisfactory reason being given. It is trite law that the entire period of delay has to be explained to the satisfaction of the Court. In considering whether to extend time or not, the court is obliged to also consider whether the intended appeal is arguable and has chances of success, hence not frivolous.
  
- 4. In this application, the decision sought to be appealed was delivered on 29<sup>th</sup> March, 2022. The instant application was filed on 11<sup>th</sup> July, 2024, a delay of about 2 years and six months which outrightly falls outside the 14 days period required by law to lodge an appeal in this Court. However, having considered the reason for the delay, being the expectation of help from family members in sourcing for an advocate that was not forthcoming, and the nature of the sentence being served, to wit, life sentence, and the fact that the respondent does not oppose the application, I am inclined to exercise my unfettered discretion in favour of the applicant. Accordingly, I allow the application.

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

**ASIKE-MAKHANDIA**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**

