



REPUBLIC OF KENYA



KENYA LAW
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**Thuku v Republic (Criminal Application E067 of 2024)
[2024] KECA 1341 (KLR) (1 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1341 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E067 OF 2024
MA WARSAME, JA
OCTOBER 1, 2024**

BETWEEN

JOB NGAU THUKU APPLICANT

AND

REPUBLIC RESPONDENT

(An application for extension of time to file a notice of appeal against the judgment of the High Court at Naivasha (Nzioka, J.) dated 24th May, 2023 in HCCRA. NO. E.002 OF 2021)

RULING

1. The applicant, (Job Ngau Thuku) 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. E002 of 2021 which dismissed his appeal against conviction and sentence of 25 years for defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*.
2. The grounds as stated on the face of the application and supported by the supporting affidavit sworn by the applicant are that the learned judge erred by upholding his conviction and sentence given that: the age of the complainant was not conclusively proved, penetration of the complainant was not sufficiently proved, and identification of the applicant was unsatisfactory.
3. The respondent vide submissions dated 11th September 2024, contended that even though the delay in filing the instant application was inordinate, the nature of the sentence was lengthy it did not oppose the application, but it would urge that the sentence of 25 years be enhanced to life in line with the Supreme Court decision in the case of *Republic v. Joshua Gichuki Mwangi*, Petition E018 of 2023.
4. I have considered the application, the notice of appeal, memorandum of appeal, the supporting affidavit and the submissions by the respondent. It is evident that there has been a delay of 11 months in filing the appeal against the judgment of the High Court.



5. While considering the issue of extension of time, the Supreme Court in the case of *Andrew Kiplagat Chemaringo v. Paul Kipkorir Kibet* [2018] eKLR, stated as follows:

“the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

6. Despite stating reasons why his appeal has high chances of success, the applicant herein has not provided one single reason for the 11-month delay in filing the notice of appeal. Consequently, I find no basis to exercise my discretion in favour of the applicant and dismiss the application accordingly.

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

M. WARSAME

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

