



**Julius v Republic (Criminal Application E156 of 2024)
[2024] KECA 1704 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1704 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E156 OF 2024
A ALI-ARONI, JA
NOVEMBER 21, 2024**

BETWEEN

PATRICK KIRIMI JULIUS APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application seeking leave to appeal out of time from the Judgment of the High Court of Kenya at Nyeri (Kagendo, J.) delivered on 31st July 2024 in HCCRA No. E020 of 2022)

RULING

1. Before the court is an application by way of an undated notice of motion seeking leave to appeal out of time from the judgment of the High Court at Nyeri (Kagendo, J.), which was delivered on July 31, 2024.
2. The application is predicated on the grounds on the face of the application and supported by the affidavit of the applicant in which he deposes that he was arrested and charged with the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act*; that after a full trial, the applicant was convicted and sentenced to 20 years imprisonment on 6th April 2022 by Hon. Matutu; being aggrieved by the judgment of the trial court, the applicant filed an appeal against both conviction and sentence in the High Court at Nyeri in HCCRA No. E020 of 2022, where the appeal was dismissed on 31st July 2024; the judgment of the High Court aggrieved the applicant, and he now is desirous of preferring an appeal to this Court; that the applicant was not able to appeal on time since his relatives promised him that they would hire a counsel who would appeal on his behalf. They later informed him that they could not raise the required fees; hence, he prays to be allowed to appeal out of time.



3. The applicant has filed undated submissions in which he references rule 64 of this *Court's Rules* 2022 and the case of *Karanja vs. Republic* [2004] eKLR, urging that in circumstances where an applicant demonstrated valid reasons for the delay, the court ought to grant an extension of time.
4. Further, he submits that the reasons for the delay in filing the appeal were circumstances beyond his control, including the prosecution's failure to provide him with the trial court's records and the judgment and that he could not access legal resources. At the same time, he submits that he was incarcerated and was hindered by personal circumstances from communicating with his legal representative promptly. He adds that despite these challenges, he has diligently and proactively pursued his rights in that upon learning of the dismissal of his first appeal, he sought assistance from fellow inmates and legal organizations to prepare the instant application.
5. Concomitantly, he submits that new evidence or arguments have since come to light regarding the fact that all ingredients of the offence were not proved in evidence, and procedural irregularities during the trial have since emerged that were not available then. He submits further that the new evidence could significantly affect the outcome if allowed to be heard on appeal, leading to a reconsideration of both the conviction and sentence.
6. I have considered the application, the supporting affidavit, and the applicant's submissions. The issue for determination is whether the applicant deserves the orders sought. The applicant's application has been brought under rule 40 of this Court's Rules, which do not deal with extension of time. I assume this is a technical error as the applicant clearly meant to bring the application under rule 4 of this Court's Rules, which governs extension of time. The rule allows this Court to exercise discretion to extend the time limited by the Rules for doing any act authorized or required by the Rules.
7. In the case of *Leo Sila Mutiso vs. Helen Wangari Mwangi* [1999] 2 EA, this Court held as follows:

"It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that, in general, the matters which this court takes into account in deciding whether to grant an extension of time are: 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".
8. The applicant has explained the cause of his delay, which is plausible, and the delay is not inordinate. Notably, his memorandum of appeal raises issues that are not idle, and further, the application remains unopposed. I am inclined to allow the same. The memorandum of appeal be filed within the next 14 days of today's date.

DATED AND DELIVERED AT NYERI THIS 21ST DAY OF NOVEMBER, 2024.

ALI-ARONI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

