



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kipng'etich v Republic (Criminal Application E142 of 2024)  
[2024] KECA 1648 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1648 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E142 OF 2024  
PM GACHOKA, JA  
NOVEMBER 15, 2024  
[IN CHAMBERS]**

**BETWEEN**

**SAMUEL BII KIPNG'ETICH ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for leave to appeal out of time against the conviction and sentence from the judgment of the High Court of Kenya at Nakuru (Odero, J.) delivered on 22nd June 2018 in HCCRA No. 259 of 2013)*

**RULING**

1. By undated Notice of Motion, the applicant seeks leave of this Court to appeal out of time against the conviction and sentence of the Nakuru High Court in HCCRA No. 259 of 2013. The applicant was charged in Nakuru CM (SO) no. 93 of 2019 with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act*. The applicant was convicted and sentenced to life imprisonment. His appeal against that conviction and sentence was dismissed by Odero, J. on 22<sup>nd</sup> June 2018 hence the application.
2. The application is supported by the grounds embodied in the application and his undated supporting affidavit. The applicant prayed that the application be allowed as the ingredients to the offence of defilement had not been proved to the required standard. Furthermore, he was not furnished with the proceedings and judgment in good time to enable him appeal.
3. The application was not opposed. In its written submissions dated 31<sup>st</sup> October 2024, the state, through Senior Assistant Director of Public Prosecutions Mr. Omutelema argued that the application ought to be allowed since the sentence meted out was lengthy.



4. Under rule 4 of the *Court of Appeal Rules* 2022, this Court has discretion to extend time limited by those *Rules*. In determining an application of this nature, this Court is alive to the principles set out by this Court in *Mwangi v. Kenya Airways Ltd* (2003) KLR 486 that held as follows:

“Over the years, the Court has set out guidelines on what a single Judge should consider when dealing with an application for extension of time under rule 4 of the *Rules*. For instance, in *Leo Sila Mutiso v. Rose Hellen Wangari Mwangi* (Civil Application No. Nai 255 of 1977) (unreported), the Court expressed itself thus:

“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.”

5. Taking those principles into account, and having considered the application and the submissions thereto, I find that the application is merited and is hereby allowed. The applicant shall file his notice of appeal within 14 days from the date of this order. Thereafter, the record of appeal shall be filed and served within 30 days from the date hereof to fast track the disposal of the appeal.

**DATED AND DELIVERED AT NAKURU THIS 15<sup>TH</sup> DAY OF NOVEMBER 2024.**

**M. GACHOKA C.Arb, FCI Arb.**

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**JUDGE OF APPEAL**

I certify that this is a True copy of the original

Signed

**DEPUTY REGISTRAR**

