



REPUBLIC OF KENYA



KENYA LAW
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**Selim v Republic (Criminal Application E141 of 2024)
[2024] KECA 1642 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1642 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E141 OF 2024
PM GACHOKA, JA
NOVEMBER 15, 2024**

BETWEEN

JOSEPH KIPROP SELIM 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 (Mativo, J.) delivered on 18th October 2014 in HCCRA No. 51 of 2011)

RULING

1. Before me for determination is an undated Notice of Motion. The applicant seeks leave of this Court to appeal out of time against the conviction and sentence of the High Court sitting at Nakuru in HCCRA No 51 of 2011. The applicant was in Nakuru CM (SO) No 111 of 2010 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, the applicant was convicted of the offence and sentenced to life imprisonment. On appeal, that conviction and sentence were upheld by the High Court (Mativo, J.) (as he then was) in its judgment dated 18th October 2014.
2. The applicant is dissatisfied with those findings hence the present application. It is supported by the grounds on the face of it and the applicant's undated supporting affidavit. The applicant urged this Court to allow the application on the following grounds: the ingredients to a charge of defilement were not proved to the required standard; and he was not availed copies of the judgment and the proceedings at the High Court in good time to enable him appeal. He annexed his memorandum of appeal to the application.
3. The application was disposed of by way of written submissions.



The applicant's written submissions dated 16th October 2024 argued that he had tried to appeal but in vain. He relied on his relatives to seek legal representation but were unsuccessful. He submitted that his appeal was merited and his application ought to be allowed by dint of the provisions set out in Articles 22 and 50 (2) (q) of the Constitution, section 379 of the Criminal Procedure Code and rule 4 of this Court's Rules.

4. In its written submissions dated 31st October 2024, the state, through Senior Assistant Director of Public Prosecutions Mr. Omutelema submitted that it did not oppose the application as the sentence meted out was lengthy.
5. Under rule 4 of this Court's Rules 2022, discretion is given to extend time for the doing of any act provided for under the Rules. In Fahir Mohammed v Joseph Mugambi & 2 others [2005] eKLR, this Court summed up the following principles when considering an application invoked in this rule:

“The exercise of this Court's discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance-are all relevant but not exhaustive factors: See Mutiso v Mwangi Civil Appl. NAI. 255 of 1997 (ur), Mwangi v Kenya Airways Ltd [2003] KLR 486, Major Joseph Mwereri Igweta v Murika M'Ethare & Attorney General Civil Appl. NAI. 8/2000 (ur) and Murai v Wainaina (No 4) [1982] KLR 38.”

6. I have considered the reasons advanced by the applicant as set out in the Motion, the supporting affidavit, the respondent's concession to the application and the law. I have also considered the draft memorandum of appeal annexed to the application. I am satisfied to hold that the application has met the threshold for the exercise of discretion by this Court. Consequently, the applicant's undated application is allowed. Accordingly, 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 15TH DAY OF NOVEMBER 2024.

M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

