



REPUBLIC OF KENYA



**Kamau v Republic (Criminal Application E134 of 2024)
[2024] KECA 1717 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1717 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E134 OF 2024
S OLE KANTAI, JA
NOVEMBER 14, 2024**

BETWEEN

BENSON WAWERU KAMAU APPLICANT

AND

REPUBLIC RESPONDENT

*(An application for extension of time for Leave to appeal out of time
from the Judgment of the High Court at Muranga (S. C. Chirchir,
J.) dated 29th June, 2023 in HC Criminal Appeal No. 1 of 2018)*

RULING

1. The applicant Benson Waweru Kamau has applied in the Motion that the Court be pleased to extend time for him to appeal out of time. He says that he was charged at the Magistrate’s Court at Kandara with the offence of defilement contrary to section 8(1) as read with section 8(2) of the [Sexual Offences Act](#); he was convicted and sentenced to life imprisonment on 29th November, 2019. It appears from the heading of the Motion and the supporting affidavit that he appealed to the High Court of Kenya at Muranga but his appeal was dismissed by Chirchir, J. on 20th June, 2023. He says:

“That, I the applicant did not appeal within the stipulated time for the reasons that; I was not furnished with a copy of the judgment in time...”

2. There is no replying affidavit to the application. I note that a hearing notice was served on 18th October, 2024 at 5 p.m. at nyeri@odpp.go.ke, and to Muranga Main prison where parties were notified of hearing date and required to file written submissions. I have not seen written submissions from either side.



3. The principles that apply in an application for leave to extend time are well known and were well captured in the oft-cited case of *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* [1999] 2 EA 231 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 stated 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.”

4. The applicant has not provided me with much material but I have seen the judgment of the High Court delivered on 9th June, 2023 where his appeal was dismissed.

5. The Motion is undated; it has the applicant’s thumb-print and I note that it was processed by the Officer in Charge, Nyeri Maximum Prison on 24th August, 2024. That is a period of about 1 year 2 months after judgment of the High Court.

6. The applicant says that he was not supplied with proceedings of the High Court after judgment was delivered in June, 2023. He is a convict in prison, he is unrepresented, he may not have ready and convenient facilities to obtain proceedings and judgment of the court from which an appeal is to be mounted. I do not think it would be fair in such circumstances to take a narrow or technical view of observance of time-lines for filing an appeal. I am persuaded that the applicant has not unreasonably delayed in making his request for time extension; I am prepared to exercise my discretion in his favour. I do not think that the respondent will be prejudiced in any way. I allow the Motion. Let the applicant file appeal within fifteen (15) days of today.

DATED AND DELIVERED AT NYERI THIS 14TH DAY OF NOVEMBER, 2024.

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

