



REPUBLIC OF KENYA



KENYA LAW
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**Cheres v Republic (Criminal Appeal (Application) E138 of 2024)
[2024] KECA 1560 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1560 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL (APPLICATION) E138 OF 2024
JM MATIVO, JA
NOVEMBER 6, 2024**

BETWEEN

WILSON KIPLANGAT CHERES APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to file an appeal out of time from the Judgment of the High Court of Kenya at Nakuru (M. Odero, J.) dated 18th May, 2018 in HCCR. No. 37 of 2017)

RULING

1. The application before the Court is dated 15th July, 2024. The main prayer is for leave to be granted to the applicant to appeal out of time against the judgment issued in HCCR. No. 37 of 2017 on 18th May, 2018.
2. The applicant, Wilson Kiplangat Cheres, was arraigned, and tried before the *High Court in Criminal Case No. 37 of 2017 at Nakuru* charged with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the [Sexual Offences Act](#), No. 3 of 2006. He was convicted and sentenced to life imprisonment.
3. The applicant's appeal to the High Court was dismissed on both conviction and sentence. The applicant failed to lodge his notice of appeal within the statutory-stipulated time of 14 days. His present application invokes Rule 4 of the [Court of Appeal Rules](#) to enlarge the time he is permitted to file his appeal. It is the applicant's case that the reason for the delay in filing his appeal on time was because he was not supplied with the appeal record.
4. In response to the application, *vide* written submissions dated 31st October, 2024, Mr. Omutelema, Senior Assistant Director of Public Prosecutions has amiably conceded to the leave application pointing to the lengthy sentence of life imprisonment.



5. I have considered the application, the undated memorandum of appeal, and the undated supporting affidavit. It is evident that there has been a delay of 6 years in filing the appeal against the judgment of the High Court. The applicant's position is that the delay was occasioned by the failure by the trial court to furnish him with the appeal record.
6. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, and 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.”
7. I have considered that the applicant is imprisoned for life. The reason in support of the application is plausible. I am inclined to exercise my discretion in his favour. I direct the applicant to file his notice of appeal within the next 21 days and the memorandum of appeal and the record of appeal within 45 days thereafter.

DATED AND DELIVERED AT NAKURU THIS 6TH DAY OF NOVEMBER, 2024.

MATIVO

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JUDGE OF APPEAL

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

Signed.

Deputy Registrar.

