



**Otieno "A" Orara v Republic (Criminal Appeal (Application)  
E135 of 2024) [2024] KECA 1559 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1559 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPEAL (APPLICATION) E135 OF 2024  
JM MATIVO, JA  
NOVEMBER 6, 2024**

**BETWEEN**

**GEORGE OCHIENG OTIENO "A" ORARA ..... 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 Kericho (Mumbi Ngugi, J.) dated 20th December, 2021 in HCCRA No. 22 of 2018)*

**RULING**

1. The application before the Court is dated 23<sup>rd</sup> July, 2024. The main prayer is for leave to appeal out of time against the judgment issued in HCCRA No. 22 of 2018, on 20<sup>th</sup> December, 2021.
2. The applicant, George Ochieng Otieno was arraigned before the Magistrate's Court in Criminal Case No. 102 of 2018 at Kericho 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 against conviction and sentence was dismissed, but, although aggrieved he 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 to file his appeal.
4. It is the applicant's case that the reason for the delay in filing his appeal on time was because of financial constraints which made his family unable to instruct an advocate to file and prosecute the appeal on his behalf.
5. In response to the application, vide written submissions dated 31<sup>st</sup> October 2024, Mr. Omutelema, Senior Assistant Director of Public Prosecution has amiably conceded to the leave application pointing to the lengthy sentence the applicant is currently serving.



6. I have considered the application, the undated supporting affidavit, the undated notice of appeal, and memorandum of appeal. It is evident that there has been a delay of approximately two years and six months in filing his appeal against the judgment of the High Court. The applicant's position is that the delay was occasioned by financial constraints which made hiring an advocate to be impossible.
7. 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.”
8. In applying the principles in *Andrew Kiplagat Chemaringo v. Paul Kipkorir Kibet* (*supra*), and considering that the applicant is serving a life imprisonment sentence, I am inclined to exercise my discretion in his favour. The undated notice of appeal and memorandum of appeal are deemed as duly filed. The record of appeal shall be filed within 45 days from today.

**DATED AND DELIVERED AT NAKURU THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**J. MATIVO**

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**JUDGE OF APPEAL**

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

signed.

**DEPUTY REGISTRAR.**

