



REPUBLIC OF KENYA



KENYA LAW
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**Paulo v Republic (Criminal Appeal (Application) E136 of 2024)
[2024] KECA 1546 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1546 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL (APPLICATION) E136 OF 2024
JM MATIVO, JA
NOVEMBER 6, 2024**

BETWEEN

JULIUS OMONDI PAULO APPELLANT

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 (A. Ongeru, J.) dated 23rd October, 2020 in HCCRA. No. 30 of 2017)

RULING

1. The application before the Court is dated 23rd July 2024. The main prayer is for leave to appeal out of time against the judgment issued in HCCRA. No. 30 of 2017, on 23rd October, 2020.
2. The applicant, Julius Omondi Paulo, was arraigned before the Kericho Chief Magistrate's Court in Criminal Case No. 9 of 2016 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 his conviction and sentence was dismissed. Although aggrieved, 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.
4. 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 High Court's judgment on time to enable him appeal on time.
5. 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 the applicant is currently serving.



6. I have considered the application, the supporting affidavit dated 23rd July, 2024, the notice of appeal dated 23rd July, 2024, and the undated memorandum of appeal. It is evident that there has been a delay of approximately four years. The applicant’s position is that the delay was occasioned by the failure to be furnished with the High Court judgment on time.
7. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of *Andrew Kiplagat Chemaringo vs. 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 vs. 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 notice of appeal dated 23rd July, 2024 and the undated memorandum of appeal are deemed as duly properly filed. The record of appeal shall be filed within 60 days from today.

DATED AND DELIVERED AT NAKURU THIS 6TH 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

